(16,585.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 372.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632.

Supreme Court of the District of Columbia.

THE CAPITAL TRACTION COMPANY, Plaintiff,
vs.
CHARLES HOF, Defendant. } At Law. No. 40239.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition for Certiorari.

Filed September 8, 1896.

In the Supreme Court of the District of Columbia.

THE CAPITAL TRACTION COMPANY, Petitioner,
vs.
CHARLES HOF, Respondent. } At Law. No. 40239.

Petition for Certiorari.

To the supreme court of the District of Columbia:

Your petitioner, The Capital Traction Company, respectfully states as follows:

1.

Petitioner is a corporation, duly created by acts of Congress of the United States, with a capital of twelve million dollars, and owning and operating an extensive system of street railways in the District of Columbia.

2.

The respondent, Charles Hof, is an individual whose citizenship and residence are unknown to the petitioner, but who, on the 17th day of August, 1896, caused a summons to be issued by Lewis I. O'Neal, Esquire, one of the justices of the peace in and for the Dis-

2 trict of Columbia, summoning this petitioner to appear on the 20th day of August, 1896, at 1.30 o'clock p. m., "to answer unto the complaint of Charles Hof in a plea of damages of three hundred dollars;" that on said 20th day of August the matter was postponed until September 8th, 1896, at 3 o'clock p. m., at which time the attorney-at-law who appeared for said Hof, after the defendant (this petitioner) had put in its plea and issue had been joined thereon, demanded of said justice of the peace that such action be "tried by a jury;" whereupon said justice of the peace issued a *venire* to a constable commanding him to summon twelve "jurors" to be and appear before said justice on the 10th day of September, at 10 o'clock. Petitioner is advised that such demand for the so-called jury is founded upon the provisions of an act of Congress of March 1st, 1823, now found in sections 1009 to 1016 of the Revised Statutes relating to this District, and is intended to subject this petitioner, without appeal, to a form of trial before said justice of the peace which is unknown to the common law and which is, as petitioner is advised, illegal and unconstitutional.

3.

Petitioner is informed and believes that the claim of said respondent is that while a passenger on one of the cars of this petitioner on Tuesday, June 16th, 1896, about 9 p. m., he was forcibly ejected from said car by the officers and agents of petitioner, and by reason of such forcible ejection fell on his side or back and was severely injured, owing, as respondent asserts, to the negligence and improper conduct of this petitioner, its agents and employés. Petitioner avers on information and belief and the statements of disinterested witnesses that it has a perfectly good defence on the merits to any claim of respondent growing out of said occurrence; and petitioner seeks a fair opportunity to make such defence before an impartial tribunal, and is ready and willing to give any security that may be required for the prompt payment of any final judgment which may be pronounced against it in due course of law.

4.

Petitioner is informed and advised that under said sections 1009 to 1016 of the Revised Statutes D. C., and the construction placed upon them in practice, the effect of such demand of the respondent Hof will be that a constable, acting under the *venire* issued by said justice of the peace as aforesaid, will summon twelve persons, selected by said constable, who will "sit together" and hear the proofs and allegations of the parties in public, and then agree upon and deliver a so-called "verdict," upon which the justice must give judgment forthwith and issue execution accordingly; that under the decisions of the courts of this District interpreting the statutes which prescribe this so-called "trial by jury," the justice of the peace, in such alleged form of trial, has no powers whatever except to preserve order and keep the so-called "jury" together; that such justice cannot rule upon the admission or exclusion of any testimony which may be offered, no matter how irrelevant, improper, or in-

3 competent it may be; that he cannot give any instructions or directions to the so-called jury in regard to the law of the case, nor restrain counsel in whatever they may choose to say in argument to such jury; that he cannot set aside a verdict nor require a reduction of its amount, no matter how excessive, or grant a new trial; that such justice cannot sign a bill of exceptions, nor entertain an appeal or writ of error in any form after such a verdict; and, in short, that the matter in controversy will be absolutely and finally decided by the undirected, unguided, uncontrollable decision of twelve persons, selected by a constable and paid in the first instance by the party demanding the trial in this method, and there will be no known right of appeal or review. This petitioner further avers that this method of summary and arbitrary decision by twelve persons selected by a constable operates unfairly and with especial hardship upon corporations, particularly those known to have large properties, such as this petitioner, in a suit by or against an individual person, owing to the well-known sympathies and prejudices existing in such a case. Petitioner is informed that it is very frequent in courts holding jury trials according to the common law to have to set aside or reduce the verdicts of juries in such cases, and that if this power in the courts did not exist corporations would be subjected to many unfounded or exorbitant verdicts and judgments, and petitioner is apprehensive with just cause that this last-mentioned result will follow in "jury" trials before justices of the peace, owing to the absence of any control or regulation of the so-called "jury" and the absence (according to precedents) of any right of appeal.

5.

Petitioner is advised that by the 7th amendment to the Constitution of the United States, guaranteeing the right of trial by jury where the value in controversy exceeds $20, is meant trial by jury according to the rules of the common law (referred to in said amendment), by which rules in civil cases the jury is to determine only the *facts* in controversy under the direction and control of the presiding judge as to the *law;* that the court is thus the trier of the law, and the jury are the triers of the facts; that the court has the power and the duty to direct the verdict in certain cases, and to set aside any verdict which is not according to the law and the evidence, and to grant a new trial; that the judge is to decide what testimony shall be admitted or excluded, and may require a plaintiff to remit part of an excessive verdict or submit to a new trial and his rulings may be reviewed on exceptions, all of which rights are of great value and importance and are essential and inseparable incidents of a trial by jury according to the course of the common law, as it existed at and before the adoption of said amendment. By the act of Congress of February 19, 1895, increasing the jurisdiction of justices of the peace, it is provided that "where the sum claimed exceeds $20 either party shall be entitled to a trial by jury," but no provision is made for the method of such trial, and

4 the only provision for a so-called jury before a justice is derived from said act of 1823, which was passed when the amounts to be so decided were limited to $50.

6.

Petitioner avers that the only method in which the claim of said Hof can be tried by a jury according to the common law and the Constitution is by removing said suit from said justice of the peace into this court, and that if this is not done this petitioner will be deprived of its constitutional right to a trial by jury and will be in danger of being deprived of its property without due process of law, and will be denied the equal protection of the laws. The amount claimed by said Hof is within the jurisdiction of this court.

The premises considered, the petitioner prays—

That a writ of certiorari may be issued by this honorable court to said Lewis I. O'Neal, justice of the peace, to remove said claim of said Hof into this court for trial according to the course of the common law upon such terms as to security for costs and damages as this court may deem proper, and that petitioner may have such other and further relief as it may be entitled to.

THE CAPITAL TRACTION COMPANY,
By G. T. DUNLOP, *President.*

ENOCH TOTTEN,
J. S. FLANNERY,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

I, George T. Dunlop, being duly sworn, on oath say that I am the president of The Capital Traction Company, the above-named petitioner; that I have read the foregoing petition and have subscribed the same as the president of the said company; that the facts therein stated positively are true, and those stated upon information and belief I believe to be true. I further state that this application is not for the purpose of delay, but solely because I believe that said company has a just and meritorious defence to the whole of the respondent's claim.

G. T. DUNLOP.

Subscribed and sworn to before me this 8th day of September, A. D. 1896.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

(Endorsed on back:) Let the writ issue. W. S. Cox, J.

5 *Return of the Justice of the Peace.*

Filed September 9, 1896.

DISTRICT OF COLUMBIA, *ss:*

The President of the United States to Chas. A. Darling or any qualified constable, Greeting:

Summon the Capital Traction Company, "incorporated," to be and appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 20th day of August, A. D. 1896, at 1.30 o'clock p. m., to answer unto the complaint of Charles Hof, in a plea of damages of $300.00.

Given under my hand and seal this 17th day of August, 1896.

LEWIS I. O'NEAL,
Justice of the Peace, 452 *D Street N. W.* [SEAL.]

In Justice's Court.

Before Justice L. I. O'Neal.

HOFF
vs.
THE CAPITAL TRACTION COMPANY. } No. —.

The plaintiff joins issue upon the answer of the defendant filed in the above-entitled cause.

ALEX. WOLF,
D. W. BAKER,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *To wit:*

In Justice's Court.

Before Lewis I. O'Neal, one of the justices of the peace in and for the District aforesaid.

CHARLES HOF, Plaintiff,
vs.
THE CAPITAL TRACTION COMPANY, "Incorporated," Defendant. } Action for Damages. At Law. No. —. For $300.00.

Date.	Proceedings.
Aug. 17, 1896	Summons issued to Charles A. Darling, constable, returnable Aug. 20, 1896, 1.30 p. m.
Aug. 17, 1896	Returned. Summoned as within directed by handing a copy of this writ to George T. Dunlop, president.
Aug. 20, 1896	Continued to Sept. 8, 1896, 3 p. m., by defendant.
Sept. 8, 1896	Continued to Sept. 10, 1896, 10 a. m., by plaintiff.
" 8, 1896	Issue joined and jury demanded by plaintiff.
Sept. 9, 1896	Defendants having orally pleaded "not guilty."

6 When I received the annexed writ of certiorari, whereby the proceedings before me in said suit were stopped.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

I, Lewis I. O'Neal, one of the justices of the peace in and for the said county and District, by virtue of the annexed writ to me delivered, do hereby certify the record and proceedings in the suit in the writ mentioned unto the supreme court of the District of Columbia, together with all things touching the same, as fully and wholly as the same is now depending before me.

Given under my hand and seal this 9th day of September, A. D. 1896.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

Cost paid by plaintiff..... $1 75
Cost paid by defendant..... 95

Motion to Quash Writ of Certiorari.

Filed September 11, 1896.

In the Supreme Court of the District of Columbia.

CAPITAL TRACTION CO. *ats.* CHAS. HOF. } At Law. No. 40239.

And now comes the respondent and moves the court to quash the writ of certiorari issued in this cause upon the return filed herein.

ALEX. WOLF,
D. W. BAKER,
Att'ys for Respondent.

Order Overruling Motion to Quash Certiorari.

In the Supreme Court of the District of Columbia.

THE CAPITAL TRACTION CO. *ats.* CHARLES HOF. } Law. No. 40239.

This case coming on to be heard on the motion of said respondent to quash the writ of certiorari heretofore issued herein, and counsel for the respective parties having been heard, on due consideration thereof it is adjudged and ordered by the court, this 7th day of October, 1896, that said motion to quash be, and the same is hereby, overruled, and the granting of said writ sustained; and it is further ordered that all proceedings before the justice of the peace herein after issue joined be, and the same are hereby, quashed.

And from this order the said respondent appeals in open court

7 unto the Court of Appeals, and the penalty of the appeal bond is fixed at fifty dollars.

W. S. COX, *J.*

Memorandum.

Oct. 8, '96.—Bond for appeal filed.

Waiver of Citation.

Filed October 14, 1896.

In the Supreme Court of the District of Columbia.

CHARLES HOF
ats.
CAPITAL TRACTION COMPANY. } At Law. No. 40239.

Waiver of citation.

The appellee, The Capital Traction Company, hereby waives service of citation on appeal taken by the respondent in the above-entitled cause.

ENOCH TOTTEN,
J. S. FLANNERY,
Attorneys for Capital Traction Co.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing are true copies of originals in cause No. 40239, at law, wherein The Capital Traction Company is plaintiff and Charles Hof is defendant, as the same remain upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 14th day of October, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 632. Charles Hof, appellant, *vs.* The Capital Traction Company. Court of Appeals, District of Columbia. Filed Oct. 15, 1896. Robert Willett, clerk.

8 THURSDAY, *November 5th, A. D.* 1896.

THE UNITED STATES *ex Rel.* THE BRIGHTWOOD RAILWAY COMPANY, Appellant,
vs.
LEWIS I. O'NEAL,
} No. 601.

and

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY.
} No. 632.

The argument in the above-entitled causes was commenced by Mr. D. W. Baker, attorney for the appellant Charles Hof, and was continued by Mr. C. Thom, attorney for the appellant The United States *ex rel.* The Brightwood Railway Company, and by Mr. M. J. Colbert, attorney for the appellee Lewis I. O'Neal, and by Mr. H. P. Blair, attorney for the appellant The United States *ex rel.* The Brightwood Railway Company, and by Mr. J. S. Flannery, attorney for the appellee The Capital Traction Company.

FRIDAY, *November 6th, A. D.* 1896.

THE UNITED STATES *ex Rel.* THE BRIGHTWOOD RAILWAY COMPANY, Appellant,
vs.
LEWIS I. O'NEAL,
} No. 601.

and

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY.
} No. 632.

The argument in the above-entitled causes was continued by Mr. J. S. Flannery, attorney for the appellee The Capital Traction Company, and by Mr. R. A. Heiskell, attorney for the appellee Lewis I. O'Neal, and by Mr. Alexander Wolf, attorney for the appellant Charles Hof, and was concluded by Mr. W. D. Davidge, attorney for the appellee The Capital Traction Company.

9 THE UNITED STATES *ex Rel.* THE BRIGHTWOOD RAILWAY COMPANY, Appellant,
vs.
LEWIS I. O'NEAL, } No. 601.

and

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

Both of these cases involve the question of the extent of the jurisdiction of justices of the peace in the District of Columbia and of the right of appeal from their judgments.

In the case of The United States *ex rel.* The Brightwood Railway Company *v.* O'Neal a petition was filed in the supreme court of the District of Columbia for the issue of a writ of mandamus to require a justice of the peace to pass upon an appeal bond which had been presented to him for his approval in pursuance of an appeal taken or sought to be taken from a judgment rendered by him upon the verdict of a jury in a suit before him where there had been a trial by jury in accordance with the provisions of the statute law upon the subject, and which bond the justice of the peace had declined to approve or accept solely upon the ground that there was no right of appeal provided by existing law from his judgments in such cases. Upon the authority of some former adjudications of the courts of the District of Columbia, to which there will be occasion to refer hereafter, the writ was refused; but in refusing it the justice of the supreme court of the District, to whom the application was made, gave expression to the opinion that his ruling was contrary to his own judgment as to the law.

In the second case, that of Charles Hof *v.* The Capital Traction Company, a petition was filed in the supreme court of the District of Columbia for a writ of certiorari to be issued to a justice of the peace for the removal into that court, for trial there in the first instance, of a cause pending before the justice of the peace, wherein a jury had been demanded by the plaintiff in the cause before the justice and the justice had issued, or was about to issue, his warrant for the summons. The writ was issued; and a return thereto was made by the justice of the peace. Thereupon there was a motion made to quash the writ. This motion the court denied, and refused to quash the writ; and an order was entered directing that all the proceedings before the justice of the peace should be vacated. But the court likewise refused to order the removal of the cause for trial in that court, presumably in conformity with the decision of this court in the case of Hendley *v.* Clark, 24 Wash. Law Rep. 197, wherein it was held that no such removal could be lawfully allowed on the ground merely of concurrent jurisdiction. And the cause

was apparently left pending before the justice of the peace, either indefinitely arrested in its progress or to be proceeded with, if he could proceed at all, without the intervention of a jury.

The conclusion reached by the learned justice who sat in this case is based, as it is understood, upon the theory that so much of the statute enacted in the premises as authorizes trial by jury before justices of the peace is unconstitutional and void. And it may be added that it was stated to us in argument that, in a suit subsequent to the two now before us, the same learned justice who sat in the first of these two cases has held that the whole legislation of Congress increasing the jurisdiction of justices of the peace beyond the sum of twenty dollars is in violation of the Constitution.

Upon appeal to this court, both of the cases now before us were argued together; and it is plain that the vital question in both is the same—the validity of the legislation of Congress providing for trial by jury in causes pending before justices of the peace. The question is one of very grave importance in the administration of justice in this District, and is deserving of our most serious consideration. This consideration we have earnestly sought to give to it.

From time immemorial in the jurisprudence of England, from which we have inherited the practice, there has existed and there has been uniformly recognized a difference between "petty debts," or debts of trifling amount, and other claims or demands, with reference to the several legal modes provided for their collection. For while the courts of general jurisdiction at Westminster had cognizance of all ordinary claims and demands, it was not considered appropriate that they should be burdened with the trial of causes involving only inconsiderable sums of money in which the costs of court would amount in most cases to more than the amount or value in dispute, and which would tend seriously to interfere with the peace and quiet of the community if they could all be brought into the courts of general jurisdiction. Consequently, pleas of debt or damage for such petty causes were cognizable in England in the county courts, courts baron, courts of the hundred, or some such minor tribunals of local and limited jurisdiction, proceeding in a more summary and informal manner than the courts of the common law at Westminster, but subject to some occasional power of control by these latter.

A similar difference or distinction of procedure seems to have characterized the colonial jurisprudence of all our American colonies. In Maryland as early as the year 1715 we find enactments of the colonial legislature vesting in the justices of the peace, who had already inherited from England the petty criminal jurisdiction from which they derived their designation, the cognizance also of controversies for "petty debts" which had been vested in the minor courts of the mother country. The jurisdiction so given was enlarged or modified by several subsequent statutes, until on December 29, 1791, the legislature of the State of Maryland, which in the meantime had adopted the Declaration of Independence, its own constitution, and the Constitution of the United States, superseded all previous legislation on the subject by the adoption of an act

entitled "An act for the speedy recovery of small debts out of court," by which authority was vested in justices of the peace to hear and determine all controversies wherein the debt or damages did not exceed ten pounds current money, or one thousand pounds of tobacco, which, as is well known, also served for the purpose of currency in those days. And the act went on to provide for an appeal by either party to the county court, then the ordinary court of general jurisdiction, in all cases where the debt or damage exceeded twenty shillings, common money, or 100 pounds of tobacco.

This act was in force in the State of Maryland when, by the cession of that State, the portion of it now known as the District of Columbia became the property of the Federal Union, and subject to the exclusive legislation over it vested by the Constitution of the United States in the Congress of the Union, as also more directly subject to the guarantees of that Constitution.

By the act of February 27, 1801 (2 Stat. 103), by which Congress assumed the jurisdiction over the District devolved upon it by the Constitution, it provided a judicial system for the District, among the provisions of which was one, contained in the eleventh section of the act, to the effect that justices of the peace should "have cognizance in personal demands to the value of twenty dollars, exclusive of costs." The limitation of twenty dollars, here specified, it may well be surmised, was suggested by the seventh amendment to the Constitution of the United States, in which it was ordained that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." In this act of Congress there was no provision for an appeal, such as there had been in the previous act of assembly of Maryland.

By an act of March 1, 1823 (3 Stat. 743), entitled "An act to extend the jurisdiction of justices of the peace in the recovery of debts in the District of Columbia," Congress enlarged the jurisdiction of these justices to controversies not involving more than fifty dollars of value; prohibited the circuit court, the then existing court of general jurisdiction, from holding original cognizance of any causes not involving more than fifty dollars; but provided that, in all causes involving more than five dollars of value, either party might appeal from the judgment of the justice of the peace to the circuit court, where the cause should be proceeded with *de novo*, yet might there also be determined summarily, unless a trial by jury should be demanded, in which case the parties should be entitled to such trial. Then evidently as an afterthought and by way of addition to the original act or bill, no doubt in deference to the requirements of the seventh amendment to the Constitution, Congress added other sections, in which it provided specifically and in some detail for the empanelling of a jury by the justice of the peace in all cases involving more than twenty dollars of value, upon the demand of either party to the cause.

This act, as modified by an act of February 22, 1867, which raised the limit of the jurisdiction of justices of the peace from fifty dollars to one hundred dollars of value (14 Stat. 401), was incorporated

into the Revised Statutes of the United States for the District of Columbia, sections 997 to 1027; and it is the constitutionality of this act, or of these sections of the revision, so far as they provide for trial by jury before justices of the peace, that is now in question.

But it is proper to note that, by a yet more recent act, that of February 19, 1895 (28 Stat. 668), Congress has still further enlarged the jurisdiction of the justices of the peace to causes involving not more than three hundred dollars of value; has made the original jurisdiction of the justices of the peace exclusive in causes involving not more than one hundred dollars; and has expressly declared that, in causes involving more than one hundred and not exceeding three hundred dollars, there shall be concurrent jurisdiction in the justices of the peace and in the supreme court of the District of Columbia. By this act it was further provided that "where the sum claimed exceeds twenty dollars either party shall be entitled to a trial by jury." But as no specific provision was made for such trial by jury, and as there is no further reference to that subject in the act, we must presume that the trial by jury thereby intended was that provided by the act of 1823, and that it was to be conducted in accordance with the provision of that act.

The act of 1895 also proceeds to enact in its third section "that no appeal shall be allowed from the judgment of the justice of the peace in any common-law action unless the matter in demand in such action or pleaded in set-off thereto shall exceed the sum of five dollars, nor unless the appellant, with sufficient surety, approved by the justice, enters into an undertaking to pay and satisfy whatever final judgment may be recovered in the appellate court."

From all which it is apparent that the matter of trial by jury in causes authorized by statute to be instituted before justices of the peace, and the matter of appeal from the judgments of these justices, remain substantially as provided in the act of 1823, with only the superadded requirement of a bond or undertaking in the case of an appeal.

But it should also be noticed that, both by the act of February 22, 1867, and that of February 19, 1895, power was given to the supreme court of the District of Columbia to make rules and regulations for the conduct of cases before the justices of the peace. The language of the act of 1867 is that the court shall "make and establish rules of practice, and prepare and publish forms of pleadings for bringing all forms of actions and the trial thereof before said justices of the peace," and that of the act of 1895 is that the court "shall make and establish such additional rules of practice and prescribe forms of process and proceedings rendered necessary by the act, and the same from time to time to alter and amend as might be deemed advisable." How far the supreme court of the District has exercised the authority so vested in it, we are not informed, and it is not perhaps material here to ascertain.

So much of the act of 1823, providing for trial by jury before the justices of the peace, and for appeals from their judgments, as has been incorporated into the Revised Statutes for the District of Columbia, modified by subsequent legislation, is as follows, although

the order of arrangement in the revision is somewhat different from that in the original act, a circumstance which may not be without some weight in our consideration, but by no means of controlling importance:

"SEC. 1009. In every action where the sum demanded shall exceed twenty dollars, it shall be lawful for either of the parties to the suit, after issue joined, and before the justice shall proceed to
11 inquire into the merits of the case, to demand of the justice that such action be tried by a jury.

"SEC. 1010. Upon such demand the justice shall issue a venire, under his hand and seal, directed to any constable of the District, commanding him to summon twelve jurors, to be and appear before the justice issuing such venire, at such time and place as shall be therein expressed.

"SEC. 1011. The jurors thus summoned shall possess the qualifications and be subject to the exceptions provided for jurors by law.

"SEC. 1012. If any of the persons summoned and returned as jurors shall not appear, or shall be challenged or set aside, the justice before whom the cause is to be tried shall direct the constable to summon, and return forthwith, talesmen, so as to make up the number of twelve, after all causes of challenge shall have been disposed of by the justice.

"SEC. 1013. The twelve persons shall be the jury who shall try the cause, each of whom shall be sworn by the justice, well and truly to try the matter in difference between the parties, and a true verdict to give, according to evidence.

"SEC. 1014. The jury being sworn, shall sit together, and hear the proofs and allegations of the parties in public.

"SEC. 1015. (Provides for an oath to the constable to keep the jury together.)

"SEC. 1016. When the jurors have agreed upon their verdict, they shall deliver the same publicly to the justice.

"SEC. 1017. The justice shall give judgment thereon forthwith, and may issue execution accordingly."

* * * * * * *

"SEC. 1027. When the debt or demand exceeds five dollars, and either the plaintiff or defendant shall think himself aggrieved by the judgment of a justice of the peace, he shall be at liberty to appeal to the next term of the supreme court of the District; and the appeal shall be there heard and determined as provided in section 774 to section 779, inclusive.

"SEC. 1028. No appeal shall be allowed from a judgment of a justice of the peace, unless the appellant, with sufficient surety, approved by the justice, enters into an undertaking to satisfy and pay all intervening costs and damages arising on the appeal." (This section, as it appears, has been superseded by the somewhat more stringent provision heretofore cited from the act of 1895.)

The sections 774 to 779, to which reference is here made, or at least two of them, sections 775 and 776, it is proper also to cite for the better understanding of the subject:

"SEC. 775. The supreme court (of the District) shall in a summary way hear the allegations and proofs of both parties, and determine upon the same according to law and the equity and right of the matter, at the same term, without further continuance or delay, unless it shall appear to the court that further time ought to be given to the party applying for the same.

"SEC. 776. Either of the parties may demand a trial by jury, or leave the cause to be determined by the court, at their election."

These sections also are taken from the act of 1823.

It is upon the theory that the appeal, provided in the foregoing section 1028 of the Revised Statutes, and in the act of 1823, from which the section is taken, lies as well in causes tried before a justice of the peace by a jury as in those that are tried by him without a jury, that the proceedings in the first of the two suits now before us are based; while in the second of these two suits, as already stated, the constitutionality of all the provisions regarding trials by jury before justices of the peace is directly brought in question.

Very soon after the passage of the act of March 1, 1823, in fact in the very same year, its scope and construction became the subject of judicial investigation; and five cases are found in the old circuit court reports, wherein the effect of the statute was sought to be ascertained.

In the first of these cases, which was that of Sherburne *v.* Semmes, 2 Cranch C. C. 446, there was an appeal from the judgment of a justice of the peace rendered in pursuance of the verdict of a jury; and one of the questions now before us was directly presented. Having doubt in regard to its jurisdiction, the court continued the case for argument. But there is no further mention of it in the reports; and it seems never to have been taken up again. The notice of the case is very brief; and we find in it neither argument of counsel nor any opinion by the court.

In the next year (A. D. 1824), the case of Davidson *v.* Burr, 2 Cranch C. C. 515, came before the court upon a similar appeal under similar circumstances. The case seems to have been fully argued, although the report of it, like most of the reports in Cranch, is exceedingly brief, and confined to a statement of the point decided. "It was objected that a justice of the peace trying causes by a jury was a judge of an inferior court of the United States, and therefore ought to be appointed *quamdin se bene gesserit;* and not having been so appointed, but holding his office only for five years, he was not a competent judge, and had no jurisdiction of the cause. It was also suggested that a cause once tried by jury could not at common law be tried again by jury in another court; nor could the fact be tried again by the court." The report goes on to say that "the court (one of the three justices however dissenting) was of opinion that the justice had jurisdiction; but that under the seventh amendment of the Constitution of the United States, which declares that in suits at common law no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law, there cannot be a trial by jury in this court of a cause which has been tried by a jury before a justice of

the peace. This cause has been tried by jury before the justice; and by the rules of the common law, it cannot be re-examined by a jury in any other court, nor by the judges without a jury."

Mr. Chief Justice Cranch added for himself the following: "A writ of error, upon a bill of exceptions, will only lie to a court of record. The proceedings of courts not of record can, by the common law, only be brought up by certiorari, if brought up at all, and not by appeal."

12 And with regard to the constitutional question raised, he said "that if the judge was such a judge of an inferior court of the United States as is intended by the third article of the Constitution of the United States, the same article fixed the tenure of his office; and it could not be altered by an act of Congress; and that if he was not such a judge, then the argument from the Constitution did not apply to his case."

The next case, that of Maddox *v.* Stewart, 2 Cranch C. C. 523, followed soon afterwards, and at the same term of the court. It was likewise an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury. The report merely states that "the court (the same justice dissenting who had dissented in the previous case) dismissed the appeal upon the ground that a fact once tried by a jury cannot be re-examined otherwise than according to the rules of the common law, and that a second trial by jury in another court is not according to the rules of the common law."

The case of Denny *v.* Queen, 3 Cranch C. C. 217, followed in the year 1827. Here also was an appeal from a judgment of a justice of the peace, rendered in pursuance of the verdict of a jury. It seems that "a paper was sent up purporting to be a prayer to instruct the jury as to the law arising upon certain facts therein stated, but which was not certified as a bill of exceptions." The action of the court thereon is thus stated:

"The court (*nem. con.*) said that as the court had heretofore decided that when a cause had been tried by a jury before a justice of the peace we could not constitutionally try the cause again by a jury in this court and the court could not try it without a jury, there was not left for this court upon the appeal anything but the law of the case, as it appeared before the justice; but the act has not prescribed the mode by which the question of law should be made to appear to this court. It certainly was not now regularly before the court." And the appeal was dismissed.

Induced, probably, by an apparent reservation in the last sentence of the foregoing opinion, another, and, it would seem, a final attempt was made to sustain an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury in the case of Smith *v.* Chase, 3 Cranch C. C. 348, in the year 1828. Here, at the trial before the justice of the peace, "the defendant tendered a bill of exceptions to an opinion of the justice upon a point of law, which the justice refused to sign;" and there was a motion made to compel him to sign it. But the court (one of the justices, however, doubting, but not dissenting) held that a writ of error would not lie to the judgment of a justice of the peace upon the verdict of a

jury, and that he was not bound to sign a bill of exceptions; and accordingly the motion was overruled.

In an able and elaborate opinion filed in this cause by Mr. Chief Justice Cranch—for himself, alone, however, as he takes pains to say, and not for the court, or even for the majority of it—the questions at issue, apparently for the first time in the history of this litigation, are discussed at length; and to this opinion, as the subsequent practice for nearly seventy years seems to have been based upon it, we will have occasion to recur in the sequel.

We have no record of any further agitation of the subject for about fifty years. But in the year 1876 the question of the right of appeal in such cases was raised again in the supreme court of the District of Columbia in the case of Fitzgerald *v.* Leisman, 3 MacA. 6; but it was speedily disposed of upon the authority of the cases above cited from Cranch's reports and in accordance therewith. Now again the question is raised in a new shape, and it must be confessed under a new light; and the great enlargement of the jurisdiction of the justices by the acts of Congress of 1867 and 1895, and the greater frequency of recourse to trial by jury for determination of the issues made before them, give enhanced importance to the controversy.

1. That the right of trial by jury secured by the seventh amendment of the Constitution of the United States in all suits at common law, where the value in controversy exceeds twenty dollars, means the right to trial by jury as known to the common law at the time of the adoption of the Constitution, with proceedings therein in accordance with the forms of the common law, we cannot regard as now open to question. Such is the apparently unanimous tenor of all the authorities on the subject. Parsons *v.* Bedford, 3 Pet. 447; Justices *v.* Murray, 9 Wall. 277; East Kingston *v.* Towle, 48 N. H. 57; Work *v.* State, 2 Ohio St. 299; Cogley's Principles of Constitutional Law, p. 250; Miller on the Constitution, p. 511. Nor do we regard it as open to question that at common law the province of a jury is limited to the determination of controverted questions of fact, put in issue by the pleadings of parties, and which are to be ascertained by the jury from such evidence as is admitted by a presiding court or judge to be presented to them, and in accordance with such instructions as to the law which such court or judge may give to them. This has always been held to be the law in civil cases; and for us it has now also been finally established as the law in criminal cases by the decision of the Supreme Court of the United States in the recent case of Sparf *v.* The United States, 156 U. S. 51.

The function of a jury at common law may now, therefore, be regarded as perfectly well settled. It is confined under the guidance of a court to the determination of questions of fact duly submitted to it, by the determination of which the court is enabled to reach a judgment between the parties. And if this be its proper and only function, it is plain that the jury can never be substituted for the court, and that the court cannot delegate or abandon to it the control of the matter of the introduction of testimony or the ascertainment of the rules of law applicable to the case pending before it.

The jury can never be permitted or authorized to take exclusive control of a case. On the contrary, it must take its law from the court, and it must consider no evidence but that which is allowed by the court and submitted to it.

When, therefore, in the opinion to which we have referred
13 as filed by Mr. Chief Justice Cranch in the case of Smith *v.* Chase, *supra*, that learned jurist joined in the judgment of the court that there could be no appeal, under the act of Congress of 1823, from the judgment of a justice of the peace in a cause tried before such justice by a jury, for the reason that the seventh amendment of the Constitution of the United States prohibited the re-examination of a fact tried by a jury otherwise than according to the rules of the common law, and yet at the same time denied to the jury authorized by that act the attributes of a common-law jury, it is plain that he had not sufficiently considered the inconsistent position thereby created. For the constitutional amendment must necessarily be construed to refer to a jury of the common law; and if the jury provided by the act of 1823 was not a jury of the common law, the amendment did not prohibit the re-examination of the facts found by it.

The learned chief justice said in his opinion: "It will be perceived that upon a demand of trial by jury, the cause is taken entirely out of the hands of the justice. He is obliged to summon and swear the jury and to render judgment according to their verdict. No authority is given to him to instruct the jury upon matter of law or fact, nor to set aside their verdict and grant a new trial. It seems to me that he acts as ministerially in entering the judgment upon the verdict as the clerk of this court does in entering its judgments. The jury are not bound by the opinions of the justice upon matters of law; nor do I perceive that he has a right to say what evidence they shall hear. If they disregard his opinion as to the law, or hear evidence which he disapproves, no new trial can be granted. They are to try the matter in difference between the parties, whether it be matter of law or matter of fact. The jury seems to be a complete substitute for the justice as to the trial of the cause. If a jury be not required by either party the justice is to decide the fact as well as the law. If a jury be demanded, they are to decide the law as well as the fact."

If this theory of the power and functions of the jury authorized to be summoned by the justice of the peace, under the act of 1823, be correct, that jury is an irresponsible mob, and not a jury of the common law. It is simply a body of compulsory triers or referees, the abnormal creation of an abnormal statute, and not the jury required by the Constitution, and to whose determination of questions of fact the Constitution gives the attribute of finality. But we fail to find any support of this theory either in the act itself or in any subsequent legislation on the subject.

Undoubtedly and beyond all question, in framing the act of March 1, 1823, Congress had in mind the seventh amendment of the Constitution; and it was the intention of that body to provide a constitutional common-law jury for the trial of issues before justices

of the peace. If it did not succeed in providing such a jury, it is either because the act is radically defective and insufficient in its terms to give effect to the manifest legislative intent, or else because it was not competent for Congress, under the Constitution, to provide a common-law jury for the courts of justices of the peace.

The statute belongs to a class in favor of which every intendment is to be made. It is not a statute in derogation of common law or common right. On the contrary, it is a statute intended to extend the domain of the common law and to facilitate the administration of justice. It may be that it was unwise to enlarge the jurisdiction of justices of the peace beyond the limit prescribed by the act of 1801; and it may be that it will yet be found expedient to transfer to municipal courts presided over by judges with fixed salaries and better versed in the law the civil jurisdiction now vested in justices of the peace, just as it has been found expedient to transfer to police courts the petty criminal jurisdiction which they formerly exercised. But thus far it has evidently been the policy of Congress to enlarge and extend the civil jurisdiction of these justices, and it is the duty of the courts in their construction of the statutes, as long as that policy lasts, to seek to give it effect and not to nullify it.

The court of the justice of the peace for the cognizance of petty cases, it must be remembered, was part of our judicial system at the time of the adoption of the Federal Constitution, and had been such for nearly two centuries or upwards. The petty courts of England, to which it corresponded, had been in existence from time immemorial. This court, although limited in the extent of its jurisdiction, was a very important factor in the administration of justice; and the Constitution of the United States did not fail to take notice of it; for in the reservation of the right of trial by jury in all cases involving more than twenty dollars of value, it evidently intended to leave undisturbed and unaffected by its provisions the petty civil jurisdiction exercised at the time by the justices of the peace. And when the Congress of the United States, for the purposes indicated in the eighth section of the first article of the Constitution, assumed jurisdiction of the District of Columbia, it took it, and it was evidently the intention of the Constitution that it should take it, with its then existing judicial system, subject to such modification thereof as might thereafter be made. The court of the justice of the peace within its narrow and restricted limits was as much a part of that judicial system, as was the court of general jurisdiction. It was not, of course, one of the courts of the United States to which any part of the judicial power vested in the Federal Government by the third article of the Constitution, could be given; for that article contemplated only the courts of general jurisdiction. But it was a court which, under its general power of legislation over the District of Columbia, the Congress might well adopt or establish. Its establishment was within the usual scope of such legislative power.

Such being the power of Congress, and it being the plain unmistakable purpose of that body to provide a common-law jury for the court of the justice of the peace in cases involving more than

twenty dollars of value, the question recurs whether the terms of the act of March 1, 1823, were sufficient to effect the purpose. It was asserted by Chief Justice Cranch, in his opinion, to which we have referred, that the jury provided by the act, while evidently regarded by him as a common-law jury, was fatally defective
14 in the constituent characteristics which we regard as essential to such a jury. But the act of Congress, in our opinion, does not justify any such conclusion. There is nothing in the act to warrant the deduction that the justice of the peace may not instruct the jury in the question of law arising in the case, or that he may not control the matter of the introduction of evidence, or that he may not even set aside the verdict of the jury and grant a new trial. Even if the act of Congress were entirely silent on the subject, the reasonable inference would be that, when the legislature provided the court of the justice of the peace with a jury, it intended that such jury should act in accordance with the course of the common law, and should serve precisely the same purpose which it serves in the courts of common law. When Congress says that in special cases there must be trial by jury, it must be taken to mean what it says; and it can only mean a jury of the common law; because we know of no other jury in our legal proceedings, except as the result of special statutory provision.

But we are not left entirely to inference in the matter. The statute plainly contemplates that, in the conduct of the trial by jury, the justice of the peace must exercise judicial functions. He undoubtedly exercises judicial functions in the empaneling of the jury; for it is distinctly and expressly provided that all causes of challenge must be disposed of by the justice. The justice is required to swear the jury to try "the matter in difference between the parties, and a true verdict to give according to evidence." Now, a "verdict" is the conclusion of a jury upon controverted questions of fact; it is a conclusion of fact, and not of law; and it is a conclusion which the statute commands the jury to give "according to evidence." Evidence and testimony do not mean the same thing. Evidence is such testimony as a court or presiding officer may regard as competent and may admit as proof under a pending issue. Plainly under the statute it is not for the jury, but for the justice, to control the introduction of testimony, and therefore necessarily to rule upon the competency of the testimony, which is offered to be adduced. And this is the main function of a judge or presiding officer in trial by jury. Instruction upon the law is only given when called for by the parties, or deemed proper by the presiding officer himself to be given. And the fact that the statute commits it to the jury "to try the matter in dispute between the parties," instead of authorizing them to try the issue joined between the parties, as the usual expression is in the courts of common law, cannot be permitted to weigh in the balance for a moment. Congress simply used the expression that was most readily intelligible to the common mind and to the court of a justice of the peace.

It may be noted that, when the Congress provided for trial by jury in the police court of the District of Columbia, which in that

regard stands in no different relation to the common law from the courts of the justices of the peace, it equally failed to provide for any express power in the judges of that court to control the jury. See act of July 23, 1892 (27 Stat. 261), and March 3, 1891 (26 Stat. 848). And yet it is properly the practice of those judges to control the admission of evidence, and to instruct their juries upon the law, as also to award new trials.

If it be objected that the justices of the peace, being often laymen and unacquainted with the law, are incompetent to instruct the jury upon questions of law, this is a consideration which might properly have weight with the appointing power and with the executive and legislative branches of government. It can have no weight whatever in the construction of such a statute as that now under consideration. Moreover, we know of no statute which requires the appointment of ignorant and incompetent persons as justices of the peace; and the common law certainly does not regard ignorance as a qualification for their office. They are expressly given jurisdiction to try the causes that are assigned to them both upon the law and the facts, and even to apply the principles of equity; and it seems to be no greater jurisdiction to instruct the jury upon the law than to apply the law themselves. It must be remembered that his jurisdiction in all cases is over "petty causes," in which prompt decision and determination according to the ordinary rules of average reason are more required for the peace and good order of the community than technical and rigid accuracy in the statement of legal propositions.

It can, therefore, scarcely be controverted with reason that the act of Congress of 1823 provided for the court of the justice of the peace a common-law jury, with all the qualifications of such a jury, if it was competent for it, under the Constitution, so to provide. And it is in this question of the constitutional power of Congress so to provide that the gist of this controversy lies. The question then is narrowed down to the inquiry whether, in legislating for the District of Columbia, it was competent for the Congress of the United States to provide for the empaneling of a common-law jury in the court of a justice of the peace for the determination of questions of fact arising in suits instituted before such justice.

It seems to us that the question should rather be: Why is it not competent for Congress so to provide? For the difficulty would seem to be, not to find the requisite authority in Congress, but to find adequate reason for the denial to it of such authority.

To Congress has been committed by the Constitution the power of exclusive legislation over the District of Columbia; and it has been frequently decided that this means all proper and legitimate legislation not prohibited by the Constitution and not inconsistent with our republican institutions. Stoutenburgh *v.* Hennick, 129 U. S. 141; De Geoffroy *v.* Riggs, 133 U. S. 258; Gibbons *v.* District of Columbia, 116 U. S. 104; Loughborough *v.* Blake, 5 Wheat. 317. The collection of petty debts through the instrumentality of tribunals of a limited jurisdiction, proceeding in a more or less summary manner, and not in precise accordance with the methods of the

ordinary courts of general jurisdiction, may be said to constitute part of our common law. As we have seen, it has constituted an integral portion of our system of jurisprudence from time immemorial. Undoubtedly it is competent for the legislative authority to regulate this judicial instrumentality. It is competent for Congress to prescribe its rules of practice and the course of its procedure. And if the legislature may authorize the justice of the peace to decide both law and fact in these petty controversies, when he sits alone without a jury, as no one questions that he may properly do, it is difficult to see why he may not be authorized by the legislative power to call in a jury to aid him in the determination of matters of fact, reserving matters of law to himself. It is difficult to see why the subordination of his methods and of his summary powers to the methods of the common law by the introduction into the proceedings before him of a common-law jury, should be contrary to the common law or violative of any constitutional or other right. To assimilate the summary methods of the justice of the peace to the more regular and more orderly methods of the courts of common law, would seem to be in the line of constitutional requirement rather than in antagonism to it.

The only plausible objection to this position is that it seems to tend to place the courts of the justices of the peace on the plane of courts of the United States and to make the justices themselves judges of courts of the United States, when, in consequence of their limited tenure of office, neither they nor their courts could be recipients of the judicial power of the United States under the third article of the Constitution. But this objection we regard as plausible rather than substantial.

The court of the justice of the peace is most undoubtedly, in a certain sense, a court of the United States, and he is himself a judge of such a court. But the courts of the United States referred to in the third article are the courts of general jurisdiction, not the exceptional courts of casual occurrence or limited jurisdiction used merely as adjuncts in the administration of the law. It does not seem to be necessary to have recourse to the distinction taken in the case of Canter *v.* Insurance Co., 1 Pet. 511, between legislative and constitutional courts; for the Constitution itself, in giving the Congress general power of legislation over the District of Columbia, must be presumed to have intended that Congress should deal with the District substantially in accordance with the system in vogue both in the colonies and in England at the time of the Declaration of Independence and in the several States of the Union at the time of the adoption of the Constitution; and when it referred generally to the judicial power of the United States and to the courts created or to be created for its exercise, it meant such judicial power as was exercised by the courts of general jurisdiction at Westminster, and the courts authorized to be established were similar courts of general jurisdiction. It was not intended thereby to affect in any manner the legislative authority over the petty tribunals in the District of Columbia that had taken or were intended to take the place of the English county courts and courts baron.

To call the justice of the peace a judicial officer, rather than a judge, does not alter the situation in any manner. The fact remains that he is a judge, a judge both of law and fact, empowered to hear and judicially to determine legal controversies, a judge with wide powers and great responsibilities within the limited scope of his jurisdiction. But his court, being in fact a court of limited jurisdiction, is not such a court as was contemplated in the third article of the Constitution as a depositary of the judicial power of the Federal Union. Consequently to assimilate his procedure to that of the courts of common law, is not in violation either of the letter or the spirit of the Constitution.

This same question was raised in the case of Davidson *v.* Burr, 2 Cranch C. C. 515, heretofore referred to, and seems to have been settled in accordance with the views here expressed.

It seems to us, therefore, that there is no constitutional inhibition that would prevent Congress from providing a common-law jury for the courts of justices of the peace; and inasmuch as it is plain that it was the legislative intention in the act of 1823 so to provide, and as the terms used in the act are sufficient for the purpose, the conclusion would necessarily follow that the act of March 1, 1823, was a valid and constitutional exercise of legislative authority. The jury provided by that act being a common-law jury such as was contemplated by the first clause of the seventh amendment of the Constitution, the second clause of the same amendment, which ordains that "No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law," is likewise applicable to the case, and must be held to preclude any appeal from the judgment of a justice of the peace in any case tried before him by a jury pursuant to the provisions of the act of 1823. The rules of the common law in such cases allow of re-examination only upon bills of exceptions, or through motions for a new trial or in arrest of judgment; and inasmuch as there is no provision of law for the removal of causes to an appellate court from the court of the justice of the peace upon bills of exceptions, there is no warrant for re-examination in such cases in the courts of general jurisdiction.

The right of appeal, which is provided by section 1029 of the Revised Statutes of the District of Columbia from the judgments of justices of the peace to the supreme court of the District, and which section, if considered alone and without regard to the context, might be assumed to authorize appeals from all judgments of these justices in controversies involving more than five dollars of value, whether rendered upon the verdict of a jury or after exclusive hearing by themselves without a jury, must be construed in the light of the statute itself and of the constitutional inhibition, to extend only to those cases in which Congress could properly give the right, and those cases would be such only as are tried by the justices without a jury.

Section 1029 is taken from the act of March 1, 1823, and the collocation in that act of the special provision, which has been incorporated into this section, shows plainly that the right of

appeal therein provided for was intended to be referable exclusively to the judgments to be rendered by the justices themselves without a jury. It follows immediately upon the provisions of the act conferring jurisdiction upon the justices, and wherein they are authorized to act without a
16 jury. As remarked by Mr. Chief Justice Cranch, in the opinion to which we have referred, the portion of the act providing for trial by jury, when such trial should be demanded, was an addition to the original draft of the act. "The seventh section of the act," he says, "when reported, did not contemplate a trial by jury before the justice. Although this circumstance is not a legitimate ground of construction, yet it corroborates the construction drawn from the language of the act itself, which, in its letter as well as in its spirit, applies only to those cases in which the act of the justice is the real cause of the grievance."

During the period of seventy years for which the act of 1823 has been in force, either as originally enacted or as incorporated into the Revised Statutes, the course of procedure thereunder has been as established by the decisions of the old circuit court of the District, to which reference has been made. Appeals have been entertained only from the judgments of justices of the peace, when they have acted themselves as judges both of law and fact, without a jury; no appeal has ever been entertained from judgments of the justices rendered upon the verdict of a jury. To overthrow this practice of seventy years and the construction of the statute upon which it is based, the error of that construction should be made very plainly to appear. In order to show that error and to sustain the right of appeal from the judgments of the justices of the peace in all cases, whether rendered upon the verdict of a jury or otherwise, a construction must be put upon the statute which would introduce a monstrosity into our law, a jury which is no jury, but a farce and a fraud, a delusion, and a snare, a stone given when bread was asked for. This we cannot regard as the legitimate construction of the act. It would certainly be an utter nullification of its scope and purpose and of the intention of Congress in its enactment; and, as we think has been shown, no such construction is demanded in order to harmonize the act with the Constitution. On the contrary, we regard such construction as antagonistic both to the letter and the spirit of the Constitution.

In the case of Callan *v.* Wilson, 127 U. S. 140, the Supreme Court of the United States, citing and reviewing several cases to the contrary and disapproving them, held that, when trial by jury is guaranteed by the Constitution, it is the requirement of that instrument and the dictate of reason that such trial should be had at as early a stage of the proceedings as might conveniently be; and that it did not comply with the constitutional requirement to give such trial only on appeal to a superior court of general jurisdiction after trial and judgment upon summary process in a subordinate court, in that case the police court of the District of Columbia. It was held that a man should not first be tried and condemned, and only

then, as the condition and result of an appeal to the higher tribunal, given his constitutional right of trial by jury.

The case of Callan *v.* Wilson, it is true, was a criminal case; but in this regard there is absolutely no difference whatever in principle between civil and criminal cases. When the Constitution says that, in suits at common law, where the value in dispute exceeds twenty dollars, the right of trial by jury shall be preserved, it would be no more than a mockery of our fundamental law to hold that the first trial of the issue shall be a mock trial, with a thing called a jury but which is no jury, and the real trial, the trial by jury authorized and required by the Constitution, should be postponed to some subsequent stage of the proceedings, after judgment has been rendered, and execution is liable to issue, and property is liable to be taken; and that even then the constitutional right of the party shall only be allowed on condition that he appeals and enters into bond to pay the future judgment that may be rendered against him in the appellate court. It seems to us that this would be a juggling with justice, and an evasion of the Constitution. Congress clearly did not intend any such thing in this case; and yet, if the jury provided by the act of 1823 is not a common-law jury, but an organized mob of compulsory referees, then the construction of the act which would lead to such a result would undoubtedly convert the enactment into a piece of legislative jugglery.

But the whole argument in this regard seems to be based upon some theory of an absolute right of appeal in all these cases to a tribunal of the common law. Objection is made, not so much to the jurisdiction conferred upon the justice of the peace, as to the denial of the right of appeal from his judgments by the intervention of a jury in his court or by any other cause whatever. And it might be inferred from the argument that the right of appeal was an inalienable right and part of the "due process of law" secured to us by the Constitution of the United States, by Magna Charta, and by the dictate of natural justice.

But there is no such absolute right of appeal. Appeal is unknown at common law. Even a bill of exceptions, by which alone a cause at common law may in general be reviewed in an appellate court, is the creation of statute law, and was given by the statute of Westminster 2. In our country, where the judicial system, notwithstanding apparent resemblances, differs radically from that of England, the right of appeal has always been recognized as the creature of statutory enactment, subject not only to be regulated and even taken away by such enactment, but even requiring express provision of law for its existence. Such is the case even with a tribunal so purely appellate in its character as the Supreme Court of the United States, which has itself distinctly and repeatedly held that it can exercise only such appellate power as is given to it by Congress. Baltimore & Potomac R. Co. *v.* Grant, 98 U. S. 398; McKane *v.* Durston, 153 U. S. 684, 687; Andrews *v.* Swartz, 156 U. S. 272, 275; Dureosseau *v.* United States, 6 Cranch, 307.

We conclude that the so-called right of appeal is not an absolute or inalienable right of parties, but that it may be given, regulated,

or taken away by act of Congress without violation of any inherent right.

The only alternative to the conclusion to be deduced from the views here expressed is that which would hold as unconsti-
17 tutional and void all the enactments of Congress that purport to confer upon justices of the peace jurisdiction in civil causes over controversies involving more than twenty dollars of value; and we understand that this conclusion has in fact been held by one of the justices of the supreme court of the District in a cause subsequent to the two now under consideration in this court. And this conclusion would certainly be the logical deduction from the argument that Congress could not provide a common-law jury for the court of the justice of the peace. For the jurisdiction conferred by statute upon the justice of the peace to try causes involving more than twenty dollars of value is to try them with a common-law jury when a jury is demanded by either of the parties; and if he cannot summon such a jury upon such demand, he has no authority at all to try the causes. The justice, of course, may proceed without a jury, if a jury is waived; but if a jury is demanded, his jurisdiction to proceed instantly ceases.

This conclusion would not only affect the title to numerous lots of ground in the District of Columbia, which have been transferred upon writs of execution, but would likewise paralyze the administration of justice in this District in all causes involving more than twenty dollars and not more than one hundred dollars of value; for under such a conclusion there would be no tribunal in the District of Columbia competent by law to take cognizance of such causes. It behooves us to pause before we sanction such a result. We do not find it necessary to adopt the course of reasoning that would necessarily, in our opinion, lead to it.

We may add that, if the continued exercise of the practice which has prevailed in the District for upwards of seventy years has become a source of hardship by reason of the enlarged jurisdiction conferred upon the justices of the peace by the acts of 1867 and 1895, and if it has become inexpedient that these justices should deal with the causes by these acts committed to their cognizance without the appellate supervision of the courts of common law, it is for Congress, not for the courts, to apply the remedy. But it may be remarked that, by virtue of the authority conferred by the two acts cited upon the supreme court of the District of Columbia to make rules and regulations for the conduct of causes before justices of the peace, that court may greatly mitigate the evil, if evil there is in the practice.

Entertaining the views which we have here expressed, not without the hope that opportunity may be found to have them reviewed and corrected, if there is error in them, by our tribunal of last resort, especially as there is dissent in this court and the views expressed are only the views of a majority of the members of the court, we are constrained to affirm the order appealed from in the first of the two causes before us, and to reverse the order in the second cause.

The decision of this court, then, is that the order of the supreme

court of the District of Columbia refusing to issue the writ of mandamus in the cause of The United States *ex rel.* The Brightwood Railway Co. *v.* Lewis I. O'Neal, be, and the same is hereby, affirmed, with costs; and that the order of the same court in the cause of Charles Hof *v.* The Capital Traction Company refusing to quash the writ of certiorari therein issued to the justice of the peace and quashing the proceedings had before the justice of the peace subsequently to the joinder of issue in the cause before him pending, be reversed, with costs. And this last-mentioned cause will be remanded to the supreme court of the District, with directions to quash said writ of certiorari, and for such further proceedings in the premises, if any, as may not be inconsistent with this opinion. And it is so ordered.

Mr. Chief Justice ALVEY, dissenting:

The questions presented on these appeals are of more than ordinary importance to the people of this District. They affect the manner of administering justice, as it has heretofore been administered in civil cases, by justices of the peace. The questions are, 1st. What is the nature and extent of the civil jurisdiction of the several justices of the peace, under the Constitution and the acts of Congress made in pursuance thereof, as the Constitution and acts of Congress apply to the District of Columbia? 2d. Whether the act of Congress of March 1, 1823, ch. 24 (3 Stat. 743), and the subsequent re-enactment thereof, providing for trial by jury before justices of the peace in civil cases is constitutional and valid; and, if constitutional and valid, whether the jury so provided for is such a jury as is within the meaning and contemplation of the seventh amendment of the Constitution of the United States, or otherwise? And, 3d. If the acts of Congress giving the right to trial by jury in actions brought before justices of the peace be valid, whether the right of appeal exists to the supreme court of the District from judgments rendered upon such trial, and if an appeal lies, to what extent are such judgments re-examinable in the appellate court?

1. The Constitution of the United States, art. 1, sec. 8, among the delegated powers to Congress, declares that Congress shall have power to constitute tribunals inferior to the Supreme Court; and to exercise exclusive legislation in all cases whatsoever over this District of Columbia, as the seat of the Government of the United States. By repeated decisions of the Supreme Court of the United States, this latter power has been construed to be equally comprehensive in Congress as are the ordinary legislative powers exercised by the State legislatures, under State constitutions. There is, therefore, no question of the right of Congress to provide for the appointment of justices of the peace, and to prescribe and provide for the performance of their duties, though such officers are not mentioned or designated in the Constitution.

The office of justice of the peace had its origin in England by virtue of the Statute of 34 Ed. 3, as we now recognize it, though the duties pertaining to it have been variously modified and enlarged, both in this country and in England. A civil jurisdiction has been engrafted upon the office and has been exercised from an early time

in this country; and at the time, and long before, the separation of this District from the State of Maryland, civil jurisdiction for
18 the recovery of small debts was exercised by justices of the peace in that State. And in the act of Congress of February 27, 1801, declaring the laws in force in the State of Maryland to be in force in this District, it was enacted that justices of the peace "shall have all the powers vested in, and perform all the duties required of justices of the peace, as individual magistrates, by the laws in force within this District." This statutory provision is still in force in this District, as will appear from the Revised Statutes of the United States relating to this District, sec. 995; and their jurisdiction has been declared and extended by repeated subsequent acts of Congress.

A justice of the peace appointed for this District was recognized and defined by the Supreme Court as an officer of the Government of the United States. This was held in the case of Marbury *v.* Madison, 1 Cr. 137; and in the subsequent case of Wise *v.* Withers, 3 Cr. 331, where the question was whether a justice of the peace in this District was an officer, judicial or executive, of the Government of the United States, and thus entitled to exemption from military duty, Mr. Chief Justice Marshall, in delivering the opinion of the court, said: "If a justice of the peace is an officer of the Government of the United States, he must be either a judicial or an executive officer. In fact, his powers, as defined by law, seem partly judicial and partly executive. He is, then, within the letter of the exemption, and of course must be considered as comprehended within its proper construction, unless there be something in the act which requires a contrary interpretation." The justice of the peace was held to be exempt from military duty.

It is very clear, however, that a justice of the peace in this District is not a judicial officer within the meaning or contemplation of the Constitution of the United States. He is not a judge of a tribunal inferior to the Supreme Court, within the meaning of the Constitution. He is not a judge in any constitutional sense; his proceedings are not according to the course of the common law, and are not matters of record, according to the meaning given by the common law. His jurisdiction in civil matters is purely statutory, and are of a summary character, intended to bring justice home, in matters of small amount, to every man's door, and to dispense with delays and expensive process of the ordinary courts of record. This has been found necessary to meet the exigencies of society in nearly all States and communities that have founded their judicial systems upon English models. In speaking of the inferior courts of England, Blackstone, in his commentaries (Bk. 3, ch. 4,) says: "These little courts, however, communicated with others of a larger jurisdiction, and those with others of a still greater power; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as by reason of their weight and difficulty demanded a more solemn discussion." In this country, instead of the court baron, the hundred courts, and the county courts, as they formerly

existed, in England, and of which Blackstone speaks, a considerable portion of the jurisdiction that was exercised by those inferior courts, has been very generally conferred upon justices of the peace, with the right of appeal to a superior court. In this District, justices of the peace have from the commencement been invested with jurisdiction to try cases and render judgments for any sums not to exceed certain amounts, and which amounts have, from time to time, been increased or extended from $20 to $300 as the limit; the supreme court of the District, until recently, having concurrent jurisdiction of all amounts exceeding $50, and at present, under the act of Congress of February 19, 1895, to extend the jurisdiction of justices of the peace, it has concurrent jurisdiction of all amounts exceeding $100. By the act of Congress just referred to of 1895, it is provided that justices of the peace in this District "shall have jurisdiction to hear, try and determine all civil pleas and actions, including attachments and replevin, when the amount claimed to be due, or the value of the property sought to be recovered shall not exceed $300, except," &c. And by the next section of the act it is declared "that such jurisdiction shall be exclusive original jurisdiction where the amount claimed to be due, or the value of the property sought to be recovered, shall not exceed one hundred dollars, and original and concurrent with the supreme court of the District of Columbia where the amount claimed to be due, or the value of the property sought to be recovered, is more than one hundred dollars, but does not exceed three hundred dollars; and where the sum claimed exceeds twenty dollars either party shall be entitled to a trial by jury."

The right of appeal is given to either party, in all cases, to the supreme court of the District, where the debt or claim exceeds $5. The supreme court of the District is required, in a summary way, on appeal taken, to hear the allegations and proofs of both parties, and determine upon the same according to law and the equity and right of the matter, at the same term, without continuance or delay, &c.; and either of the parties may demand a trial by jury, or leave the cause to be determined by the court, at their election. Rev. Stats. U. S. D. C., secs. 774, 775, 776. The trial on appeal to the supreme court of the District is *de novo*, and as if the case had been originally instituted in that court. This is manifest from the terms of the statute, directing the manner and course of investigation of the allegations and proofs on appeal. Either party is secured in his right to a jury trial on appeal, if he desires such mode of trial; and it has been held in many cases, as shown by Judge Cooley, "that it is competent to deny to parties the privilege of a trial by jury in a court of first instance, provided the right is allowed and secured on appeal. It is undoubtedly competent," says the author, "to create new tribunals without common-law powers, and to authorize them to proceed without a jury; but a change in the forms of action will not authorize submitting common-law rights to tribunals in which no jury is allowed." Cooley, Const. Lim. (6th ed.) page 505; Emerick *v.* Harris, 1 Binn. 416; McDonald *v.* Schell, 6 S. & R. 240; Wilson *v.* Simonton, 1 Hawks, 482; Monford *v.* Bar-

ney, 8 Yerg. 444; Beers *v.* Beers, 4 Conn. 535; Reckner *v.* Warner, 22 Ohio St. 275; Jones *v.* Robbins, 8 Gray 373; Flint
19 River, &c., Co., *v.* Foster, 5 Ga. 194; Lincoln *v.* Smith, 27 Vt. 328, 360; Stewart *v.* Baltimore City, 7 Md. 500. This general principle has been modified as applied to criminal cases, upon the principle that the accused should not be first convicted by a court and then be subject to another trial to entitle him to an acquittal by a jury. It is, therefore, held that the prisoner has a right to jury trial from the first moment and in whatever court he is put on trial for the offense charged. Callan *v.* Wilson, 127 U. S. 540. It is manifest, however, that there is a marked distinction between the case of a criminal charge, involving the life or liberty of the party accused, and that of a civil proceeding for the recovery of small debts or demands as between party and party. The case of Callan *v.* Wilson was decided on the construction of the second section of the third article of the Constitution, which declares that "the trial of all crimes, except in cases of impeachment, shall be by jury;" and on the construction of the sixth amendment to the Constitution which declares that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." But the right to trial by jury, secured by the seventh amendment to the Constitution, applies only to civil cases, in which legal rights are to be ascertained and determined, as distinguished from rights in criminal cases or equitable rights.

2. The next question is, whether the jury provided for by the act of Congress of March 1, 1823, ch. 24, and confirmed by subsequent acts of Congress, is a legal and valid jury for the trial of cases before justices of the peace, and if so, whether such jury is a common-law jury, and such as is contemplated by the seventh amendment of the Constitution.

In view of the exclusive legislative power of Congress over this District, it is difficult to conceive how a question can be seriously raised as to the want of power in Congress to provide for a jury as an aid to the exercise of the jurisdiction conferred upon justices of the peace. But whether such jury is a common-law jury, and therefore within the meaning and contemplation of the seventh amendment to the Constitution or a jury of purely a statutory creation in analogy to the common-law jury, is another and a different question. By the seventh amendment, sec. 1, to the Constitution, it is provided that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." This was simply preserving the common-law right of trial by jury, and all the substantial incidents belonging thereto, without the power of Congress to violate or impair that right.

It has been held from an early day that this provision of the Constitution contemplated only the trial by jury as known and defined by the common law, as distinguished from juries that may be provided for to aid in the administration of other systems of law, such as the equity, admiralty, or the ordinary probate jurisdiction,

or other special statutory juries. Parsons *v.* Bedford, 3 Pet. 433. The jury secured by the Constitution is for the trial of suits at the common law, and their findings of fact cannot be re-examined, except according to the rules and course of the common law. But the jury provided for by the act of Congress of 1823, ch. 24, is not a common-law jury, in any proper sense of the term. It is indispensable to the exercise of the functions of a common-law jury, that it should sit with a judge or court of record, and whose proceedings are according to the course of the common law. Such jury can only decide matters of fact, and that must be under the direction and subject to the control of a judge of record. Without such judge or court a common-law jury cannot perform its proper functions as such. And though a jury may be instituted as a substitute for the common-law jury, with most of its incidents, it is not the same thing, and does not fulfil the common-law definition. The respective functions of judge and jury are stated by Lord Coke in several places in his commentaries upon Littleton and which have been uniformly recognized as the true lines of distinction. At page 125, section 193, Lord Coke says, that "tryall is to finde out by due examination the truth of the point in issue or question between the parties, whereupon judgment may be given. And as the question between the parties is twofold, so is the triall thereof; for either it is *questio juris*, that shall be tried by the judges either upon demurrer, special verdict or exception, * * * or it is *questio facti*" And at page 155*b*, sec. 234, the learned author says, "The most usual triall of matters of fact is by twelve men; for *ad questionem facti non respondent judices;* and matters in law the judges ought to decide and discuss; for *ad questionem juris non respondent juratores.*"

But, as we have seen, "a justice of the peace, as an individual magistrate," is not a judge within the meaning of the Constitution, and holds no court in the common-law sense; and the jury provided for is clearly not a common-law jury. The jurors required to be summoned and empaneled are simply aids or auxiliaries to the magistrate in the exercise of his jurisdiction; and, in analogy to the functions of the common-law jury, are required to hear the evidence and render a verdict thereon. And while without a competent court there can be no jury in a common-law sense of the term, yet there may be a jury authorized by statute to aid in the exercise of a special summary jurisdiction, such as that of a justice of the peace, without a court according to the common-law definition.

Nor is there anything anomalous or novel in these definitions and distinctions; and certainly it was equally competent to Congress to provide for such jury as it would be to provide for a special jury to hear and determine issues out of a court of equity. Such jury would clearly not be a common-law jury to hear and decide upon common rights, within the meaning of the Constitution. The chancellor would not be concluded by the verdict of the jury, but he could re-examine the facts embraced in the findings of the jury.

In the State of New York, the constitution of the State secured to the party proceeded against trial by jury; and in the case of

People *v.* Fisher, 20 Barb. 652, the supreme court of that
20 State said: "A common-law jury trial can only be had in a court of common-law jurisdiction, both as regards the character of the court and its mode of procedure. It is not true that simply making the jury to consist of twelve men constitutes a common-law jury trial." And therefore, instead of twelve men, as provided by the act of 1823, ch. 24, it was equally competent to Congress to have provided for any different number than twelve, either more or less, such jury not being a common-law jury, but one constituted in analogy to the common-law jury only. Work *v.* State, 2 Ohio St. 296.

In the work of Messrs. Thompson and Merriam on Juries, sec. 10, the authors have collected the authorities upon this question, and stated the result of them as follows: "But whenever facts are to be found in any proceeding in which a jury was not required by the common law, a jury of any number may be authorized within the discretion of the legislature. Thus justices' courts, not being courts of record, are not within the constitutional provision just mentioned. Juries did not form a part of the machinery of such tribunals at common law, and so long as an appeal is provided for to the common-law courts from their determinations, no constitutional objection can arise whether the facts are found by a justice or by the aid of a jury of any number of men."

This is, doubtless, in strict accordance with long-settled views and opinions, and established practice in all jurisdictions where the judicial functions of the justice of the peace are similar to those exercised by justices of the peace in this District.

3. But it is argued in these cases, and it was so held in the court below, that there is no appeal, and can be none, in any case arising before a justice of the peace where a jury has been or may be demanded, under the act of Congress of 1823, ch. 24; that the jury provided for by that act is invested with exclusive power of deciding both the law and the facts of the case, wholly irrespective of the power of the justice of the peace, and that there are no means provided for an appeal in any such case, and there can be no review of the findings of the jury. But clearly this construction is without valid foundation. It is true, if the jury provided for by the act of 1823 was a common-law jury, it could not be required to decide matters of law, nor could its findings of fact be made re-examinable in any other manner than according to the course of the common law. But not being a common-law jury, the inhibition of the Constitution does not apply to its findings, and a reasonable construction of the statute does not require that such jury as that provided for should decide matters of law as well as of fact. The jurisdiction that is exercised is that delegated to the justices of the peace; the agency of the jury is only auxiliary to the exercise of that jurisdiction. The jury is sworn to decide according to the evidence, not the law, and to render a verdict thereon, not a judgment. The judgment is the effective result of the trial, and that is required to be rendered by the justice of the peace. He may not have power, by the terms of the statute, to set aside and vacate the verdict; but

he is required to determine all questions relating to the qualifications of the jurors, and he must, from the necessity of the case, and upon plain principles of implication, have the right to swear the witnesses and determine what evidence shall be heard and considered by the jury; and if no sufficient evidence be offered, it becomes his plain duty to direct a verdict accordingly. The jurors must, in analogy to the relation of judge and jury at the common law, be subject to the direction of the justice in the course of the trial. Otherwise such trials would likely become farcical, and bring the administration of justice before justices of the peace into contempt. And such being the relation of justice and jury in the trial of causes, in any case where verdict and judgment have been entered, whether upon evidence, or for the want of evidence, and in cases where judgments have been entered without verdicts, the party supposing himself aggrieved thereby has the right of appeal therefrom to the supreme court of the District of Columbia. This right of appeal exists in all civil suits tried before justices of the peace, where the debt or demand is above $5; and it does not except the cases tried with the aid of a jury. All the legislation of Congress in regard to the civil jurisdiction of justices of the peace must be construed *in pari materia*, and given such effect as will best accomplish the objects of the statutes. The appeal in all cases is taken from the judgment of the justice, whether rendered upon his own inquiry or upon the verdict of a jury, and never from the verdict itself. Upon the appeal coming into the supreme court of the District, that tribunal is required to hear the case on the allegations and proofs *de novo*, as if the case had originated in that court; and either party may demand a jury trial. The fact that the case was tried before the justice with the aid of a jury, and that his judgment was rendered upon a verdict, in no manner affects the right and duty of the supreme court to hear the case on the allegations and proofs *de novo*, and determine upon the same according to law and the equity and right of the matter.

To hold, according to some of the arguments made at bar, either that the act of Congress of 1823, ch. 24, is unconstitutional and void, or that there could be no civil jurisdiction conferred upon justices of the peace for amounts to exceed $20, because of the right of parties to demand the trial by common-law jury of all amounts exceeding that sum (which jury the act of 1823 does not supply), would be to declare, as the matter of jurisdiction is now limited in this District by the act of Congress of February 19, 1895, that there is no available remedy for parties where the amount claimed to be due, or the value of the property desired to be recovered exceeds $20 and is not more than $100—there being no original jurisdiction in the supreme court for amounts under $100. Such state of law, if it really existed, would be very deplorable; but there is in reality, according to my opinion, no such defective jurisdiction existing in this District.

The act of Congress of 1823, ch. 24, has been the subject of a variety of views and interpretations, as to its effect and proper construction, as will appear from the cases of Sherburne *v.* Semmes, 2

Cr. C. C. 446; Davidson *v.* Burr, 2 Cr. C. C. 515; Denny *v.* Queen, 3 Cr. C. C. 217; Smith *v.* Chase, 3 Cr. C. C. 348, and Fitzgerald
21 *v.* Leisman, 3 MacA. 6. It was held in those cases, so far as they show any definite ruling, that where a case had been tried by a jury under the act, there could be no re-examination of their findings; that they passed upon the whole case to the exclusion of all participation of the justice, and that an appeal did not subject their findings to re-examination by the appellate court. The right of appeal, however, was all the time in force, and the case on appeal was required to be heard on the respective allegations and proof of the parties *de novo*, as at present; and it is difficult to conceive of any reason why an appeal was not available, except upon some theory, not clearly defined, that the jury provided for by the act of 1823, was a common-law jury, within the meaning of the Constitution. This, as I have attempted to show, was not the character of the jury provided for by the act of 1823.

With all the perplexity, and apparent doubt and difficulty in the construction of the act of 1823, and of its application in practice, its constitutionality has never been seriously challenged, until very recently; but by a decision of the court below recently made, the act has been declared unconstitutional and void. This construction carries with it many serious consequences that should be avoided if possible. The act has been in force for near about three-quarters of a century; and during that time, as we may well suppose, a great many valuable rights have arisen and are dependent upon the validity of proceedings had under that act. To declare the act to have been unconstitutional and void from the commencement, with the consequent invalidity of all proceedings thereunder, would likely produce great trouble and confusion. With all due respect to the opinions of others, however, I am of opinion that the act is not unconstitutional; and that the right to trial by jury as contemplated by the Constitution, and according to the principles of the common law, is amply secure to either party by the right of appeal to the supreme court of the District; and such right of appeal and right to trial by jury on appeal, are necessary conditions to the lawful exercise of the civil jurisdiction of justices of the peace, "where the value in controversy exceeds twenty dollars." Indeed, the right of appeal and a trial *de novo*, both as to law and fact, are essential rights to both plaintiff and defendant in these magistrate's cases, and I cannot concur in any construction by which one party by his mere election of the mode of trial before the justice may cut off the right of appeal to the other. The statute in giving the right of appeal and requiring the case to be tried *de novo* by the appellate court makes no such distinction or discrimination. The right of appeal and a trial before a jury under the direction of a court of common-law jurisdiction, are the rights to be preserved and protected; and the trial by jury thus secured to both parties fully gratifies the constitutional requirement.

These are my views in respect to the exercise of the jurisdiction conferred upon justices of the peace in this District; and it follows from them that, in my opinion, the order of the court below passed

in the case of The United States on the relation of The Brightwood Railway Company *v.* Lewis I. O'Neal, discharging rule to show cause why a mandamus should not issue, and dismissing petition and refusing the mandamus, ought to be reversed, and the cause be remanded to the court below that the writ of mandamus might issue as prayed. But with respect to the order of the court below, passed in the case of Charles Hof *v.* The Capital Traction Company, overruling motion to quash writ of certiorari, and quashing part of proceedings before the justice of the peace, such order should be reversed, and the petition for the writ of certiorari be dismissed, for the reason that an appeal from the judgment of the justice of the peace would furnish to the defendant the appropriate remedy for any grievance it might have by the judgment of the justice.

22 WEDNESDAY, *February 17th, A. D.* 1897.

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632. January Term, 1897.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause refusing to quash the writ of certiorari therein issued to the justice of the peace and quashing the proceedings had before the justice of the peace subsequently to the joinder of issue in the cause before him pending be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court with directions to quash said writ of certiorari, and for such further proceedings in the premises, if any, as may not be inconsistent with the opinion of this court.

Per Mr. JUSTICE MORRIS.

February 17, 1897.

Dissenting, Mr. Chief Justice Alvey.

23 THURSDAY, *February 25th, A. D.* 1897.

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632.

Mr. J. S. Flannery, of counsel for the Capital Traction Company, prayed the court for a writ of error to remove said cause to the Supreme Court of the United States. Whereupon it is ordered that counsel for the respective parties be allowed to file briefs in support and in opposition thereto.

24 UNITED STATES *ex Rel.* THE BRIGHTWOOD R'Y CO. *vs.* LEWIS I. O'NEAL, } No. 601.

and

CHARLES HOF, Appellant, *vs.* THE CAPITAL TRACTION COMPANY. } No. 632.

Applications for Writ of Error to the Supreme Court of the United States.

The principle involved in these cases is one of more than ordinary importance, and it is therefore desirable that it should be finally settled by the Supreme Court of the United States if there be any way by which it can be taken to that tribunal of last resort; but we are not able to perceive any ground upon which a writ of error can be allowed under the decisions of the Supreme Court. It is true it is not for this court to decide the question of jurisdiction of the Supreme Court or in what case a writ of error will lie; but it should at least appear that the case is reasonably within some principle upon which the writ of error can be allowed to justify this court in allowing the writ and sending the case to the Supreme Court; but, while we feel constrained to refuse the allowance of the writ, the party making the application for it can apply to one of the justices of the Supreme Court for the writ, and the order that we now pass will in no manner prejudice the right. The writ of error is refused.

Endorsed: No. 601. U. S. *ex rel.* Brightwood R'y Co., appellant, *vs.* Lewis I. O'Neal; and No. 632. Charles Hof, appellant, *vs.* The Capital Traction Company. Opinion of the court, per Mr. Chief Justice Alvey, on petition for writ of error. Court of Appeals, District of Columbia. Filed Mar. 9, 1897. Robert Willett, clerk.

25 TUESDAY, *March 9th, A. D.* 1897.

CHARLES HOF, Appellant, *vs.* THE CAPITAL TRACTION COMPANY. } No. 632.

Upon consideration of the appellee's petition for a writ of error to remove the above-entitled cause to the Supreme Court of the United States, it is by the court now here ordered that said petition be, and the same is hereby, denied.

Per Mr. CHIEF JUSTICE ALVEY.

March 9, 1897.

26 In the Supreme Court of the United States.

THE CAPITAL TRACTION COMPANY, Plaintiff in Error,
vs.
CHARLES HOF.

Petition for Writ of Error.

To the Supreme Court of the United States:

The petition of the Capital Traction Company, a corporation duly organized under and by virtue of several acts of Congress and doing business in the District of Columbia, respectfully shows as follows:

In an action at law in the Court of Appeals of the District of Columbia, at a term lately held in the city of Washington, D. C., said court rendered a judgment against this petitioner and in favor of one Charles Hof in a cause in which said Hof was appellant and said petitioner was appellee. Your petitioner complains that a great wrong and injustice has been done in the said cause by said court, as appears by the record thereof, and your petitioner further complains that said court erred as follows:

1. By holding that the act of Congress of March 1, 1823,
27 wherein provision is made for "jury" trials in courts held in the District of Columbia by justices of the peace, is a valid statute, thereby depriving the petitioner of its right to a trial by jury in said cause, wherein is involved more than $20, to wit, the sum of $300.

2. By holding the form of trial provided by said act of March 1, 1823, to be constitutional, whereby your petitioner is in danger of being deprived of its property without due process of law and will be denied the equal protection of the laws.

Wherefore your petitioner prays that a writ of error may issue from this honorable court to the Court of Appeals of the District of Columbia to review the judgment of said court in said cause.

ENOCH TOTTEN,
Attorney for Petitioner.

The "record" in Court of Appeals is hereto attached.

E. T.

28 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Court of Appeals, before you or some of you, between Charles Hof, appellant, and The Capital Traction Company, appellee, a manifest error hath happened, to the great damage of the said appellee, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 3, 1897. Robert Willett, clerk.

29 Know all men by these presents that we, The Capital Traction Company, as principal, and George T. Dunlop, as sureties, are held and firmly bound unto Charles Hof in the full and just sum of five (5) hundred dollars, to be paid to the said Charles Hof, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the Court of Appeals of the District of Columbia, in a suit depending in said court between Charles Hof and The Capital Traction Company, a corporation, a judgment was rendered against the said The Capital Traction Company, and the said The Capital Traction Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Hof, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The Capital Traction Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea

good, then the above obligation to be void; else to remain in full force and virtue.

THE CAPITAL TRACTION COMPANY,
By G. T. DUNLOP, *President.* [SEAL.]
GEO. T. DUNLOP. [SEAL.]

Sealed and delivered in the presence of—
—— ——.

Approved by—
MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] No. 632. Charles Hof, appellant, *vs.* The Capital Traction Company. Bond on appeal to the Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Apr. 3, 1897. Robert Willett, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To Charles Hof, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Capital Traction Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this third day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

MELVILLE W. FULLER,
Chief Justice of the United States.

Service accepted this 3rd day of April, A. D. 1897.
D. W. BAKER,
Attorney for Charles Hof.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 3, 1897. Robert Willett, clerk.

31 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 30, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Charles Hof, appellant, *vs.* The Capital Traction Company, No. 632, January term, 1897, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 20th day of April, A. D. 1897.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,585. District of Columbia Court of Appeals. Term No., 372. The Capital Traction Company, plaintiff in error, *vs.* Charles Hof. Filed May 8th, 1897.

No. 108.

Brief of Perry for Pltf. in Err. on mo.

Office Supreme Court U. S.
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OCTOBER TERM, 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

Brief of Plaintiff in Error on the Motion to Dismiss.

R. ROSS PERRY,
Attorney for Plaintiff in Error.

LAW REPORTER PRINT.

In the Supreme Court of the United States.

No. 108.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

Brief of the Plaintiff in Error on the Motion to Dismiss.

I.

BRIEF STATEMENT OF FACTS.

The petition for the allowance of the writ of *certiorari* in this cause was filed in the Supreme Court of the District of Columbia the 8th of September, 1896. It prayed that court to have certified to it the proceedings in a cause pending before a Justice of the Peace of the District of Columbia, in which the petitioner was the defendant and Charles Hof the plaintiff (R., 1). The ground for this prayer was that the said Hof had demanded a jury trial before the said justice under the provisions of sections 1009–1016 of the Revised Statutes of the United States relating to the District of Columbia. (R., 2, 3, 4.)

These sections read as follows:

> "Sec. 1009. In every action where the sum demanded shall exceed twenty dollars, it shall be lawful for either of the parties to the suit, after issue

joined, and before the justice shall proceed to inquire into the merits of the case, to demand of the justice that such action be tried by a jury.

"Sec. 1010. Upon such a demand the justice shall issue a *venire*, under his hand and seal, directed to any constable of the District, commanding him to summon twelve jurors, to be and appear before the justice issuing such *venire*, at such time and place as shall be therein expressed.

"Sec. 1011. The jurors thus summoned shall possess the qualifications and be subject to the exceptions provided for jurors by law.

"Sec. 1012. If any of the persons summoned and returned as jurors shall not appear, or shall be challenged or set aside, the justice before whom the cause is to be tried shall direct the constable to summon, and return forthwith, talesmen, so as to make up the number of twelve, after all causes of challenge shall have been disposed of by the justice.

"Sec. 1013. The twelve persons shall be the jury who shall try the cause, each of whom shall be sworn by the justice, well and truly to try the matter in difference between the parties, and a true verdict to to give, according to evidence.

"Sec. 1014. The jury being sworn, shall sit together, and hear the proofs and allegations of the parties in public.

"Sec. 1015. [Provides for an oath to the constable to keep the jury together].

"Sec. 1016. When the jurors have agreed upon their verdict, they shall deliver the same publicly to the justice.

"Sec. 1017. The justice shall give judgment thereon forthwith, and may issue execution accordingly."

The writ issued as prayed and the return of the Justice of the Peace, filed September 9, 1896, showed that a trial by jury had been demanded by the said Hof (R. 5). A motion to quash the writ was filed on the 11th of the same month, but was overruled, and all proceedings before the Justice of the Peace after issue joined were quashed. An appeal

from this order was taken to the Court of Appeals on October 14, 1896 (R. 6, 7.) That court, on February 17, 1897, reversed the judgment of the lower court and ordered the writ to be quashed (R. 34) From this order a writ of error to the Supreme Court of the United States was prayed, but was denied by the Court of Appeals on March 9, 1897. (R. 35.)

Thereupon a petition for the allowance of a writ of error was filed in this court, allowed, upon consideration, by the Chief Justice, and issued April 3, 1897. (R. 36, 37.)

No steps in the proceedings were afterwards taken until the month of October, 1898. Then, after this case had been pending in this court for a year and a half, notice was given by the attorney for the Defendant in Error that he would move to dismiss the writ of error on the ground that this court was without jurisdiction to hear the cause; and upon the further ground that the Defendant in Error was not a proper party to the record.

The importance and effect of this case are far reaching. Its gravity can be seen from a reading of the opinions of the justices of the Court of Appeals (R., pp. 9–34), and the brief of the Plaintiff in Error which has been filed in this court. It need only be said here that, according to the opinion of the Court of Appeals, Congress has power to confer upon Justices of the Peace in the District of Columbia jurisdiction over causes involving any amount, on the ground that the jury before a Justice of the Peace is a common law jury as contemplated by the Seventh Amendment to the Constitution of the United States. According to the majority opinion of the Court of Appeals there is no appeal from the judgment of a Justice of the Peace, entered upon the verdict of such a jury. (R., pp. 9–26.)

By the Act of February 19, 1895 (28 Stat. 668), the exclusive jurisdiction of Justices of the Peace was enlarged to one hundred dollars, while between one hundred and three

hundred dollars, there is concurrent jurisdiction in the Justices of the Peace and the Supreme Court of the District of Columbia.

By the Act of February 27, 1801 (2 Stat. 103), Justices of the Peace were given jurisdiction over claims to the value of twenty dollars. This jurisdiction was extended to fifty dollars by the Act of March 1, 1823 (3 Stat. 743), to one hundred dollars by the Act of February 22, 1867 (14 Stat. 401), and to three hundred dollars by the Act of February 19, 1895 (28 Stat. 668).

II.

ARGUMENT AND AUTHORITIES.

A.

The writ of error sued out in this case is based upon the provisions of an act of Congress entitled—

> "An act regulating appeals from the Supreme Court of the District of Columbia, and the Supreme Courts of the several Territories,"

approved March 3, 1885, 23 Stat. 443. Ch. 355 provides:

> "That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.
>
> Sec. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

Commenting on these provisions, this court says, in the case of Baltimore and Potomac Railroad *vs.* Hopkins, 130 U. S. 222:

> "When the validity of a statute of, or authority exercised under, the United States, is drawn in question in a State court, the decision of the latter must be against its validity in order to justify a review of such decision, but under this act it is sufficient if the validity is drawn in question irrespective of the conclusion reached. So that the inquiry is confined to whether the validity of such a statute or authority is actually controverted."

It is the contention of the Plaintiff in Error that it claims in its petition for *certiorari* filed in the Supreme Court of the District of Columbia (R., pp. 1–4) that certain statutes of the United States—that is, sections 1009 to 1016 of the Revised Statutes of the United States relating to the District of Columbia—are invalid and unconstitutional. The petition for *certiorari* expressly states in its second paragraph (R. 2) that the form of trial by jury in a court of a Justice of the Peace, as provided by sections 1009 to 1016 of the Revised Statutes of the United States relating to the District of Columbia is unconstitutional. The return of the Justice of the Peace to the writ of *certiorari* (R. 5) showed that a jury trial in the Justice's court had been demanded by the plaintiff.

The allegation in the second paragraph of the petition that the effect of a trial by jury before a Justice of the Peace, as provided in the said sections of the Revised Statutes, will be to subject the petitioner to an unconstitutional trial, is the same thing as an allegation that those sections are unconstitutional, for the reason that they provide for an unconstitutional jury. It would seem a mere dispute of words and not of substance to contend the contrary. Yet it is not disputed that the latter allegation would be sufficient

to bring in question the validity of the above-mentioned sections of the Revised Statutes.

In paragraphs 4 and 5 of the petition it is set forth that "under sections 1009 to 1016 of the Revised Statutes, D. C., and the construction placed upon them in practice," a jury before a Justice of the Peace, in many ways therein mentioned, is not a jury as contemplated in the Seventh Amendment to the Constitution of the United States. It is further stated in paragraph 6 of the petition that unless the case is removed from the court of the Justice of the Peace to the Supreme Court of the District of Columbia the petitioner will be deprived of its constitutional right to a trial by jury, and will be in danger of being deprived of its property without due process of law (R. 6).

The motion of the defendant in error to dismiss the appeal is based on the ground that there is no complaint of the right of Congress to enact sections 1009 to 1016 of the Revised Statutes of the United States relating to the District of Columbia, but merely of the construction placed upon them.

The construction, however, of an act of Congress is simply a declaration as to what the statute means, by the only authority competent to declare its meaning. In the case of Baltimore and Potomac Railroad Company *vs.* Hopkins, 130 U. S., this court says, at page 224:

> "Whenever the power to enact a statute as it is by its terms, or is made to read by construction, is fairly open to denial and denied, the validity of such statute is drawn in question, but not otherwise."

This is reiterated in the case of Miller *vs.* Cornwall Railroad Company, 168 U. S. 133. Therefore the allegation in the petition for *certiorari* of the construction of the above sections of the Revised Statutes relating to the District of Columbia is the same thing as the same allegation in regard to the sections themselves.

The necessary construction of paragraph 5 of the petition is that, by the above-mentioned sections of the Revised Statutes, the Seventh Amendment of the Constitution is violated.

Moreover, it will be noticed that it is not merely the construction of these sections which is complained of. The complaint in paragraph 4 is placed in the conjunctive, as follows (R. 2):

> "Petitioner is informed and advised that under said sections 1009 to 1016 of the Revised Statutes D. C., *and* the construction placed upon them in practice."

In addition the contention of the Defendant in Error seems to overlook the constitutional objections to a jury trial before a Justice of the Peace set forth in paragraph two of the petition for *certiorari*. This has been adverted to above.

Both the majority and minority opinions of the Court of Appeals in the consideration of this petition show clearly that the only point raised was as to the constitutionality of the said sections.

Mr. Justice Morris, delivering the opinion of the court, says (R. 10):

> "Upon appeal to this court, both of the cases now before us were argued together; and it is plain that the vital question in both is the same—the validity of the legislation of Congress providing for trial by jury in causes pending before justices of the peace. The question is one of very grave importance in the administration of justice in this District, and is deserving of our most serious consideration. This consideration we have earnestly sought to give to it."

And in the same opinion (R. 14) he says later:

> "It is upon the theory that the appeal, provided in the foregoing section 1028 of the Revised Statutes,

and in the Act of 1823, from which the section is taken, lies as well in causes tried before a justice of the peace by a jury as in those that are tried by him without a jury, that the proceedings in the first of the two suits now before us are based; while in the second of these two suits, as already stated, the constitutionality of all the provisions regarding trials by jury before justices of the peace is directly brought in question."

Mr. Chief Justice Alvey says in his dissenting opinion (R. 26):

> "The questions presented on these appeals are of more than ordinary importance to the people of this District. They affect the manner of administering justice, as it has heretofore been administered in civil cases, by justices of the peace. The questions are, 1st. What is the nature and extent of the civil jurisdiction of the several justices of the peace, under the Constitution and the acts of Congress made in pursuance thereof, as the Constitution and acts of Congress apply to the District of Columbia? 2d. Whether the Act of Congress of March 1, 1823, Ch. 24 (3 Stat. 743), and the subsequent re-enactment thereof, providing for trial by jury before justices of the peace in civil cases is constitutional and valid; and, if constitutional and valid, whether the jury so provided for is such a jury as is within the meaning and contemplation of the Seventh Amendment of the Constitution of the United States, or otherwise? and, 3d. If the acts of Congress giving the right to trial by jury in actions brought before justices of the peace be valid, whether the right of appeal exists to the Supreme Court of the District from judgments rendered upon such trial, and if an appeal lies, to what extent are such judgments re-examinable in the appellate court?"

In view of the foregoing considerations it is difficult to see how the validity of the sections in dispute could be more effectually brought in question.

B.

It is objected that in the present writ of error the Defendant in Error should have been the Justice of the Peace and not Charles Hof, the plaintiff in the trial of the cause.

This contention is directly contrary to the proceedings in the case of Harris *vs.* Barber, 129 U. S. 366, which was also an appeal from an order quashing a writ of *certiorari* directed to a justice of the peace of the District of Columbia in a matter involving the construction of the Landlord and Tenant Act of the District of Columbia. The parties in error were there the same in interest as in the present proceedings. The substantial party in interest here is Hof, not the Justice of the Peace. When the latter has certified his record his interest in the case ceases. Hof's rights and interests, not those of the Justice of the Peace, are being litigated, and were he not a party his rights would be passed upon and determined in a proceeding in which he had no opportunity or right to be heard. It is submitted that this court will in such cases regard the substance and not the form.

This objection hardly lies in the mouth of the Defendant in Error at this stage of the case. The original petition made him party respondent (R. 1). No demurrer was filed to it, nor was the motion to quash based upon this ground (R. 6). The Defendant in Error appealed to the Court of Appeals as Respondent to the petition (R. 6, 7). He can not, it is submitted, be heard now to aver for the first time that he is not properly such Respondent.

R. ROSS PERRY,
Attorney for Plaintiff in Error.

No. 108.

Brief of Perry for P. in E.

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OCTOBER TERM 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, Plaintiff in Error,
vs.
CHARLES HOF.

BRIEF FOR PLAINTIFF IN ERROR.

B. ROSS PERRY,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

I.

CONCISE STATEMENT OF THE CASE.

This is a writ of error to the Court of Appeals of the District of Columbia. On September 8, 1896, the plaintiff in error, a body corporate by virtue of an act of Congress, doing business in the District of Columbia, filed in the Supreme Court of that District a petition, praying that a writ of *certiorari* should issue from said court to Lewis I. O'Neal, a Justice of the Peace in said District. (R. 1.) The main fact set forth in this petition, in support of the prayer for the issuance of the writ of *certiorari*, was that the petitioner had been sued by the present defendant in error before the said Justice of the Peace in a plea of damages of $300, and that a jury trial of the issue joined in that case had been demanded by the plaintiff therein. The petitioner further averred that, under the provisions of Article VII of the Amendments to the Constitution of the United States, it was entitled to a jury trial according to the course of the

common law, and that no such trial could be had before a Justice of the Peace in the District of Columbia. The writ of *certiorari* was prayed in order that such trial might be had in the Supreme Court of the District of Columbia, and there was also the prayer for other and further relief. (R. 1–4.)

Upon the filing of this petition Mr. Justice Cox ordered the writ to issue. (R. 4).

To this writ the justice of the peace made his return, showing the pendency of the suit before him for $300 damages, the summons thereon to the defendant therein, the joinder of issue by the parties litigant, the demand of a jury by the plaintiff therein, and the service of the writ of *certiorari*. (R. 5, 6).

On September 11, 1896, the respondent Hof moved to quash the writ upon the return filed. (R. 6).

On October 7, 1896, Mr. Justice Cox after argument overruled this motion, and quashed all proceedings before the justice of the peace subsequent to issue joined. (R. 6).

From this order the respondent prayed an appeal to the Court of Appeals of the District of Columbia. (R. 7).

This appeal was heard by that court on November 5, 6, 1896. (R. 8).

On February 17, 1897, a majority of that court (Morris and Shepard, JJ.) filed an opinion sustaining the validity of a jury trial before a justice of the peace in the said District. (R. 9–26). Mr. Chief Justice Alvey filed a dissenting opinion (R. 26–34). The court united in an order reversing that of Cox, J., under review, Alvey, C. J., holding that an appeal lay from the verdict of a jury in a justice's court, and that the petitioner could have his constitutional rights protected upon such appeal to the Supreme Court of the District of Columbia.

This order overruling Cox, J., and directing the writ of *certiorari* to be quashed was made on February 17, 1897. (R. 34).

On February 25, 1897, the petitioner prayed for a writ of error to this court upon the said order. (R. 34).

The Court of Appeals reluctantly denied the writ on March 9, 1897. (R. 35).

Whereupon a petition was filed in this court for allowance of the writ of error (R. 36), and it was allowed on April 3, 1897. (R. 37).

II.

ASSIGNMENT OF ERRORS.

1. The Court of Appeals erred in reversing the judgment of Cox, J., refusing to quash the writ of *certiorari* in question, and in quashing the said writ.

2. The Court of Appeals erred in holding that there can be a lawful trial by jury in a civil action before a justice of the peace in the District of Columbia.

3. The Court of Appeals erred in holding that a justice of the peace in the District of Columbia has jurisdiction to hear and decide any suit at law involving more than $20.

4. The Court of Appeals erred in holding that proceedings before a justice of the peace in the District of Columbia, in a suit at law involving more than $20, are or can be according to the course of the common law.

5. The Court of Appeals erred in holding that there can be no appeal to the Supreme Court of the District of Columbia from the judgment of a justice of the peace in said District, in a case tried by jury before said justice.

III.

STATEMENT OF POINTS OF LAW AND OF FACTS TO BE DISCUSSED IN ARGUMENT.

Narrative of Relevant Matter.

Shortly after the Constitution of the United States was adopted there was enacted in Maryland the Act of Assembly

of 1791, Ch. LXVIII, entitled: "An Act for the recovery of small debts out of court, &c."

2 Kilty's "Laws of Maryland."

This act authorized one justice of the peace in each county, in all cases where the amount in controversy did not exceed ten pounds current money, "to try, hear and determine" the matter, and to give judgment according to the laws of the land, *and "the equity and right* of the matter."

When in 1801 (February 27) Congress was providing for the administration of justice in the District of Columbia it enacted generally that all laws of the State of Maryland should continue in force in that part of the District which had theretofore constituted a portion of that State, and it enacted similarly with respect to the laws of Virginia as applying in that portion of the District derived from the latter State.

2 Statutes at Large, pp. 103, 104.

But when it came to consider the Maryland Act of 1791, cited, and the provisions of law applying in Maryland for the collection of small debts, it was confronted by the absolute language of the Seventh Amendment to the Constitution of the United States, and it made this significant provision:

> "and they [justices of the peace] shall have cognizance in personal demands to the value of *twenty dollars*, exclusive of costs; *which sum they shall not exceed, any law to the contrary notwithstanding.*"
>
> 2 Statutes at Large, p. 107.

On March 3, 1823, Congress passed an act entitled:

> "An act to extend the jurisdiction of justices of the peace, in the recovery of debts, in the District of Columbia."

The circumstances attending the passage of this act will be recurred to.

It provided that—

> "in all cases where the real debt and damages do not exceed the sum of $50, exclusive of costs, it shall and may be lawful for any one justice of the peace . . . to try, hear and determine the matter in controversy and . . . to give judgment according to the laws existing in the said District of Columbia, *and the equity and right of the matter*, in the same manner, and under the same rules and regulations, to all intents and purposes, as such justices of the peace are now authorized and empowered to do when the debt and damages do not exceed the sum of $20, exclusive of costs."
>
> 3 Statutes at Large, p. 743.

Section 6, of the same act takes away from the Circuit Court of the District of Columbia (the predecessor of the present Supreme Court of the District of Columbia), original jurisdiction in all cases of debt or damage not exceeding $50, exclusive of costs.

Section 7 gives a right of appeal to the circuit court in all cases where the debt or demand exceeds the sum of $5.

Section 15 gives the right of jury trial before the justice of the peace upon the demand of either party to the controversy, when the sum in controversy exceeds $20.

By Act of Congress of February 22, 1867, this jurisdiction was increased to $100.

> 14 Statutes at Large, p. 401.

At present, by Act of Congress of February 19, 1895, the limit of this jurisdiction is $300.

> 28 Statutes at Large, p. 668.

The provisions of the act of 1823 have been substantially incorporated in sections 1000–1021, R. S. D. C.

This act of 1823 soon became the subject of adjudication in the old Circuit Court of the District. Its judicial history is well given by Mr. Justice Morris (R., 9) as follows:

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-Printer's mistake-

tice of the peace. This cause has been tried by jury before the justice; and, by the rules of the common law, it can not be re-examined by a jury in any other court, nor by the judges without a jury."

"Mr. Chief Justice Cranch added for himself the following: 'A writ of error, upon a bill of exceptions, will only lie to a court of record. The proceedings of courts not of record can, by the common law, only be brought up by *certiorari*, if brought up at all, and not by appeal.'

"And with regard to the constitutional question raised, he said 'that if the judge was such a judge of an inferior court of the United States as is intended by the third Article of the Constitution of the United States, the same article fixed the tenure of his office; and it could not be altered by an act of Congress; and that if he was not such a judge, then the argument from the Constitution did not apply to his case.'

"The next case, that of Maddox *vs.* Stewart, 2 Cranch C. C. 523, followed soon afterwards, and at the same term of the court. It was likewise an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury. The report merely states that 'the court (the same justice dissenting who had dissented in the previous case) dismissed the appeal upon the ground that a fact once tried by a jury can not be re-examined otherwise than according to the rules of the common law.'

"The case of Denny *vs.* Queen, 3 Cranch, C. C. 217, followed in the year 1827. Here also was an appeal from a judgment of a justice of the peace, rendered in pursuance of the verdict of a jury. It seems that 'a paper was sent up purporting to be a prayer to instruct the jury as to the law arising upon certain facts therein stated, but which was not certified as a bill of exceptions.' The action of the court thereon is thus stated:

"'The court (*nem. con.*) said that as the court had heretofore decided that, when a cause had been tried by a jury before a justice of the peace we could not constitutionally try the cause again by a jury in this court and the court could not try it without a jury,

"Very soon after the passage of the Act of March 1, 1823—in fact, in the very same year—its scope and construction became the subject of judicial investigation; and five cases are found in the old Circuit Court Reports wherein the effect of the statute was sought to be ascertained.

"In the first of these cases, which was that of Sherburne *vs.* Semmes, 2 Cranch C. C. 446, there was an appeal from a judgment of a justice of the peace rendered in pursuance of the verdict of a jury, and one of the questions now before us was directly presented. Having doubt as to its jurisdiction, the court continued the case for argument. But there is no further mention of it in the reports, and it seems never to have been taken up again. The notice of the case is very brief; and we find in it neither argument of counsel nor any opinion by the court.

"In the next year (A. D. 1824) the case of Davidson *vs.* Burr, 2 Cranch C. C. 515, came before the court on a similar appeal, under similar circumstances. The case seems to have been fully argued, although the report of it, like most of the reports in Cranch, is exceedingly brief, and confined to a statement of the point decided. 'It was objected that a justice of the peace trying causes by a jury was a judge of an inferior court of the United States, and, therefore, ought to be appointed *quamdiu se bene gesserit*; and, not having been so appointed, but holding his office only for five years, he was not a competent judge, and had no jurisdiction of the cause. It was also suggested that a cause once tried by a jury could not at common law be tried again by jury in another court; nor could the fact be tried again by the court.' The report goes on to say that 'the court (one of the three justices, however, dissenting) was of the opinion that the justice had jurisdiction; but that under the Seventh Amendment of the Constitution of the United States, which declares that in suits at common law no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law, there can not be a trial by jury in this court of a cause which has been tried by a jury before a jus-

there was not left for this court upon the appeal anything but the law of the case, as it appeared before the justice; but the act has not prescribed the mode by which the question of law should be made to appear to this court. It certainly was not now regularly before the court.' And the appeal was dismissed.

"Induced, probably, by an apparent reservation in the last sentence of the foregoing opinion, another, and, it would seem, a final attempt was made to sustain an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury in the case of Smith *vs.* Chase, 3 Cranch C. C. 348, in the year 1828. Here, at the trial before the justice of the peace, 'the defendant tendered a bill of exceptions to an opinion of the justice upon a point of law, which the justice refused to sign;' and there was a motion made to compel him to sign it. But the court (one of the justices, however, doubting, but not dissenting) held that a writ of error would not lie to the judgment of a justice of the peace upon the verdict of a jury, and that he was not bound to sign a bill of exceptions; and accordingly the motion was overruled.

"In an able and elaborate opinion filed in this cause by Mr. Chief Justice Cranch—for himself, alone, however, as he takes pains to say, and not for the court, or even for the majority of it—the questions at issue, apparently for the first time in the history of this litigation, are discussed at length; and to this opinion, as the subsequent practice for nearly seventy years seems to have been based upon it, we will have occasion to refer in the sequel.

"We have no record of any further agitation of the subject for about fifty years. But in the year 1876, the question of the right of appeal in such cases was raised again in the Supreme Court of the District of Columbia in the case of Fitzgerald *vs.* Leisman, 3 MacA. 6; but it was speedily disposed of on the authority of the cases above cited from Cranch's Reports and in accordance therewith. Now, again, the question is raised in a new shape, and it must be confessed under a new light; and the great enlarge-

ment of the jurisdiction of the justices by the Acts of Congress of 1867 and 1895, and the greater frequency of recourse to trial by jury for determination of the issues made before them, give enhanced importance to the controversy."

On June 17, 1896, a petition was filed before Bradley, J., by the Brightwood RR. Co., praying for the issuance of a writ of *mandamus* to compel a justice of the peace to approve an appeal bond in a case where a trial by jury had been had before the justice. Mr. Justice Bradley denied the prayer of the petition, saying that he felt bound by the decisions above cited, but at the same time delivering a strong and trenchant opinion against their reasoning, and suggesting that a reconsideration of the important questions involved ought to be had.

24 Wash'n Law Reporter, 406.
Appendix to this Brief, 1–7.

On October 6, 1896, Cox, J., delivered his opinion in the case at bar, refusing to quash the writ of *certiorari*.

24 Wash'n Law Reporter, 646.
Appendix, 7–17.

On November 3, 1896, Bradley, J., in the case of Jacob H. Kengla *vs.* Roland C. Booth, At Law, No. 40,356, upon *certiorari*, quashed certain proceedings before a justice of the peace, on the broad ground that justices of the peace in this District have no jurisdiction in actions at law involving more than $20.

24 Wash'n Law Reporter, 715.
Appendix, 18–24.

The opinion of the majority of the Court of Appeals in the case at bar (R. 9–26), holds that a justice of the peace has such jurisdiction, and that there is no appeal from the judgment of the justice entered upon the verdict of a jury.

The opinion of Mr. Chief Justice Alvey (R. 26–34), holds that the justice has jurisdiction, but that an appeal will lie from his judgment even where that judgment has been entered upon such verdict.

To resume:

The justices of the old Circuit Court held that a justice of the peace had jurisdiction to try suits at law involving more than $20 and not more than $100, and that where a jury trial was had in such suit no appeal lay to a higher court, nor could the justice instruct the jury on matters of law, nor set aside their verdict and grant a new trial.

Mr. Justice Bradley holds that a justice of the peace, in the District of Columbia, has no jurisdiction in any suit at law involving more than $20, because any party to such suit has a constitutional right to a jury trial of his cause according to the course of the common law, and such trial can not be had before such justice of the peace.

The majority of the Court of Appeals (Morris and Shepard, JJ.), hold that such trial can be so had, and that no appeal will lie from the justice's judgment upon the verdict, because a fact so found can not be re-examined under the present state of the law. They further hold that the justice of the peace has authority to instruct the jury on questions of law and to set aside their verdict and grant a new trial.

Mr. Chief Justice Alvey and Mr. Justice Cox agree with Mr. Justice Bradley as to his main contentions, but they hold that an appeal can be taken and a common law trial thus secured; that for this reason the law is not unconstitutional.

Justices Morris and Shepard agree with Mr. Justice Bradley in holding that the law in question is plainly unconstitutional unless the trial before the justice of the peace is a jury trial according to the course of the common law.

But all of the justices of the Court of Appeals and Justices Cox and Bradley agree that the decisions of the old circuit court, the opinion of Cranch, C.J., and the acquiescence for nearly a century in that opinion are erroneous.

That opinion is as follows (R., 17):

> "It will be perceived that upon a demand of trial by jury the cause is taken entirely out of the hands of the justice. He is obliged to summon and swear the jury and to render judgment according to their verdict. No authority is given to him to instruct the jury upon matter of law or fact, nor to set aside their verdict and grant a new trial. It seems to me that he acts as ministerially in entering the judgment upon the verdict as the clerk of this court does in entering its judgments. The jury are not bound by the opinions of the justice upon matters of law; nor do I perceive that he has a right to say what evidence they shall hear. If they disregard his opinion as to the law, or hear evidence which he disapproves, no new trial can be granted. They are to try the matter in difference between the parties, whether it be a matter of law or a matter of fact. The jury seems to be a complete susbtitution for the justice as to the trial of the cause. If a jury be not required by either party the justice is to decide the fact as well as the law. If a jury be demanded, they are to decide the law as well as the fact."

Of this opinion the Court of Appeals say (R., 17):

> "If this theory of the power and functions of the jury authorized to be summoned by the justice of the peace, under the act of 1823, be correct, that jury is an irresponsible mob, and not a jury of the common law. It is simply a body of compulsory triers or referees, the abnormal creation of an abnormal statute, and not the jury required by the Constitution, and to whose determination of questions of fact the Constitution gives the attribute of finality. But we fail to find any support of this theory either in the act itself or in any subsequent legislation on the subject."

It is thus manifest to this court how important are the questions here involved, and how great is the uncertainty with respect to them which this court must put at rest.

It will be maintained that justices of the peace in the District of Columbia can not be constitutionally empowered to determine suits at law involving more than $20.

A.

Of what nature is the civil jurisdiction of a justice of the peace?

It seems to have been assumed, both in the argument of counsel below and in the opinions of the courts, that light would be thrown upon the nature of this jurisdiction in this District by an inquiry concerning the origin of the office of justice of the peace and his jurisdiction by statutory law in England. But this is a mistake. There can be no question that the function of a justice of the peace, from the time of the creation of the office down to the present period in England, has been that of a conservator of the peace.

Bacon's Ab., Tit. Justice of the Peace.
Burn's Justice *passim.*
4 Inst. 170.

The true source of the civil jurisdiction which justices of the peace commonly exercise in the United States is to be found in what were called the Courts of Requests, or Courts of Conscience, for the recovery of small debts, established by Statute of 3 Jac. I, Ch. 15, in the City of London.

In the case of Johnston *vs.* Nelms, 21 Ga. 192, it is said that "the justice courts throughout the several States correspond, to a great extent, to the courts of conscience." The most instructive passage upon the subject is found in the third book of Blackstone's Commentaries, page 81, from which we cite as follows:

> "The proceedings in these special courts ought to be according to the course of the common law, unless otherwise ordered by Parliament; for, though the King may erect new courts, yet *he can not alter the established course of law.*

"But there is one species of courts, constituted by Parliament in the City of London, and other trading and populous districts, which in their proceeding so vary from the course of the common law that they may deserve a more particular consideration. I mean the courts of requests, or courts of conscience, *for the recovery of small debts.* The first of these was established in London, so early as the reign of Henry VIII, by an act of their common council; which, however, was certainly insufficient for that purpose, and illegal, till confirmed by Statute 3 Jac. I, Ch. 15, which has since been explained and amended by Statute 14 George II, Ch. 10. The constitution is this: Two aldermen and four commoners sit twice a week to hear all causes of debt *not exceeding the value of forty shillings*; which they examine in a summary way, by the oath of the parties or other witnesses, and make such order therein as *is consonant to equity and good conscience.* The time and expense of obtaining this summary redress are very inconsiderable, which make it a great benefit to trade; and thereupon divers trading towns and other districts have obtained acts of Parliament for establishing in them courts of conscience upon nearly the same plan as that in the City of London.

"The anxious desire that has been shown to obtain these several acts, proves clearly that the nation in general is truly sensible of the great inconvenience arising from the disuse of the ancient county and hundred courts; wherein causes of this small value were always formerly decided, with very little trouble and expense to the parties. But it is to be feared, that the general remedy which of late hath been principally applied to this inconvenience (the erecting these new jurisdictions) may itself be attended in time with very ill consequences; as *the method of proceeding therein is entirely in derogation of the common law*; as their large discretionary powers create a petty tyranny in a set of standing commissioners; and as the disuse of the trial by jury may tend to estrange the minds of the people from that valuable prerogative of Englishmen, which has already been more than sufficiently excluded in many instances."

It will be specially noted hereafter that the proceedings of these courts of conscience are directly antagonistic to the course of the common law. At present attention is called to the fact that these proceedings are not according to the common law.

The jurisdiction of a justice of the peace only embraced cases that were too small to be thought worthy of the protection of the law of the land. This jurisdiction was an application of the legal maxim *de minimis non curat lex*. In order to estimate the full force of this we must advert to the administration of justice in England prior to the Norman Conquest. The jurisdiction of the Anglo-Saxon courts was local. Justice was administered at every man's door by the local tribunal. The county court was the great unit of jurisdiction and of judicial administration. Inferior to that were the courts baron and the hundred courts, both of which were local and administered local law. The principal effort of William the Conqueror was, while not overthrowing the local courts, to nevertheless draw causes away from them to his royal court. This he accomplished by the use of the royal original writ; and in process of time, as we know, the royal courts assumed almost the entire jurisdiction of causes throughout the realm. In these royal courts the king's justice was administered, and that was the justice that ultimately became the law of the land. It was in the king's courts, and by means of the use which was made by Henry II of the Norman inquisition, that the trial by jury was established. So that, during the centuries, the course of the common law came to mean the trial of the subject's cause by jury in the king's courts and under the direction of the king's judges. Outside of this justice, as of too small importance to be included within it, were these matters of small debts. The limit came to be established at forty shillings; if more than that sum was demanded, justice had to be sought in the king's courts through the king's original writ, and the king's law was there administered by the king's judges and

the king's jurymen. If the debt sought was below that sum, then the common law did not deal with it at all. It was so inconsiderable a thing that it was turned over to such remedies as existed outside of the common law. These remedies were at first the court baron, the hundred court and the county court. After they fell into disuse the special courts referred to by Blackstone were created by act of Parliament for the purpose, and there were established in the city of London the Courts of Conscience for the recovery of small debts.

Bigelow's History of Procedure in England, Chaps. 3, 4.

Inderwick's "The King's Peace."

Pollock & Maitland's History of English Law, Book 2, Chap. 9.

In Maryland, from which State we derive our justices of the peace, the very expression "small debts" has been conserved, as also the admonition to decide according to the laws of the land and the *equity and right of the matter.* It is said in a work of great authority in that State (Latrobe's Justice, p. 49):

> "Although the expression small debts appears at first sight to be rather indefinite, yet by various legislative enactments a precise meaning has been given to it, and it now means all debts which may be recovered before a justice of the peace."

The act cited of the General Assembly of Maryland, 1791, Chap. lxviii, is entitled "An Act for the Speedy Recovery of Small Debts out of Court." And section 1 of the act goes on to provide that such debts, where the debt and damages do not exceed ten pounds, current money, shall be heard before one justice of the peace.

There are other acts of the General Assembly referring to the same subject, but it is not necessary to cite them. It has been explicitly decided by the Court of Appeals of Mary-

land that at common law justices of the peace were merely conservators or keepers of the peace, and although the legislature has conferred upon them limited jurisdiction in civil and criminal cases, *the office itself has never been considered a court of law.*

Weikel *vs.* Cate, 58 Md. 105.

Up to this point we may fairly claim to have established that in Maryland the proceedings of a justice of the peace are not according to the course of the common law, and that the jurisdiction exists only for the recovery of *small debts out of court.*

B.

What are *small debts ?*

In England they were debts not exceeding forty shillings.

In Maryland, at about the time of the adoption of the Constitution of the United States, they were debts not exceeding ten pounds, current money, equal to a little less than $30.

Act of 1771, Chap. 16, 1 Kilty.

But, whatever they may be elsewhere, in this District they are debts not exceeding $20.

This is absolutely established by the words of the Seventh Amendment to the Constitution of the United States.

Any suit involving a sum in excess of this limit must be tried in the due course of the common law and by a common law jury if such trial be demanded.

But this very characteristic excludes the definition of a *small debt,* for such debt was one recoverable outside of the course of the common law.

In States whose constitutions do not fix *small debts* by a mathematical standard, the definition of the term may not be inflexible. The legislatures of such States may be able to

say that what was once considered a large debt has become, through the growth of commerce and of wealth, so insignificant as to be properly designated as a small debt. But Congress can not say this. The framers of the Seventh Amendment thought the matter of so grave import that they would not leave it to a sliding scale to be operated by the National Legislature. They said that any citizen who had a claim involving more than $20 should have the right to *the law of the land*. And so the law must remain until the Constitution shall have been altered. No matter how poor a man may be, he is entitled to the course of the common law where his claim is worth it, and his claim is worth it if it involves more than $20. The legislature of New York or of any other State may put the price higher, but the Constitution puts it just there, and it calls a claim for more than $20 a small or petty debt.

C.

Having, as we think, established the fact that the jurisdiction of a justice of the peace is not exercised according to the common law, we come to the question whether or not a common law jury can be constitutionally assigned by Congress to a justice's court. And we will proceed to consider in detail the constitutional objections which exist to such a course.

Article 7 of the Amendments to the Constitution of the United States provides as follows:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

The meaning of the controlling words of this Amendment has been determined by sundry decisions of this Court.

The amendment refers in terms to "suits at common law." The first question, therefore, to be asked is, what are suits at common law?

This question is answered by Mr. Justice Story, delivering the opinion of the Supreme Court of the United States in the case of Parsons *vs.* Bedford, 3 Peters, 446. At page 447 he uses this language:

> "The phrase 'common law' found in this clause, is used in contradistinction to equity, and admiralty and maritime jurisprudence. The Constitution had declared, in the third article, 'that the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority,' etc., and to all cases of admiralty and maritime jurisdiction. It is well known that in civil causes in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases, to inform the conscience of the court. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved, in suits at common law, the natural conclusion is that this distinction was present to the minds of the framers of the amendment. By common law, they meant what the Constitution denominated in the third article, '*law*;' not merely suits, which the common law recognized among its old and settled proceedings, but *suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered;* or where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit. . . . Proceedings in cases of partition, and foreign and domestic attachment might be cited as examples variously adopted and modified. In a just sense, the amendment, then, may well be construed to embrace all suits, which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they assume to settle legal rights."

In the case of the Justices *vs.* Murray, 9 Wallace, p. 227, Mr. Justice Nelson, delivering the unanimous opinion of the court, confirms this reasoning.

In a very recent case, decided by the Supreme Court of the United States, it was held that the words in question embrace a proceeding by the State under its power of eminent domain.

> Chicago, Burlington, etc., RR. *vs.* Chicago, 166 U. S. 226. (See opinion of Harlan, J., pp. 242–246.)

Mr. Chief Justice Marshall, speaking for the Supreme Court in the case of Weston *vs.* The City of Charleston, 2 Peters, 464, thus defined the term "suit":

> "The term (suit) is certainly a very general one, and is stated to apply to any proceedings in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him. The modes of proceeding may be various; but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit."

This language is quoted with approval by Chief Justice Taney in the case of Holmes *vs.* Jennison, 14 Peters, 567.

A very instructive opinion in this connection is that of Mr. Justice Bradley in Upshur County *vs.* Rich, 135 U. S. 467. At page 477 the learned justice says:

> "The principle to be deduced from these cases is that a proceeding, not in a court of justice, but carried on by executive officers in the exercise of their proper functions, as the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character and can not, in any just sense be called a suit; and that an appeal in such a case to a board of assessors or commissioners having no general powers, and only authorized to determine questions of quantity, proportion and value, is not a suit; but that such an appeal may become a suit, if made to a court or tribunal having

> power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and on the other."

If the proceeding in question be a suit, then from the fact that the verdict of a jury is involved in it, *upon which verdict judgment in accordance therewith must be entered*, it would seem to be beyond question that such proceedings are a suit at law as opposed to a proceeding in equity. Certainly the rights which are asserted are legal and not equitable rights.

Strongly in point are the following words of Mr. Justice Field delivering the opinion of this court in the case of Scott *vs.* Neely, 140 U. S. 106:

> "*All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for a breach of a simple contract, or as damages for injury to person or property are legal actions, and can be brought in the Federal courts only on their law side. Demands of this kind do not lose their character as claims cognizable in the courts of the United States only on their law side, because in some State courts, by virtue of State legislation, equitable relief in aid of the demand at law may be sought in the same action. Such blending of remedies is not permissible in the courts of the United States.*"

It would seem, then, to be beyond question that a proceeding whereby a sum of money is demanded by one person from another as damages for a wrong alleged to be inflicted by the latter upon the former, is a suit at law within the meaning of the Seventh Amendment of the Constitution.

Such being the case, it follows from the words of the amendment that it must be tried by a jury, and it is conceded by every one that this means a common law jury. (R., 16, 30.) That this jury can only sit in a court which administers the common law, in which a case is tried according to the common law, would seem to be equally plain. The language of this amendment is that no fact tried by a jury shall be

otherwise re-examined in any court in the United States than according to the rules of the common law. If it is to be re-examined according to such rules, it would seem to follow that the fact must have been tried according to those rules.

D.

Recurring, however, to the admitted fact that the trial must be had by a common law jury, we are led to ask: In what does a common law jury consist? This question has been most admirably answered by Mr. Justice Cox (Appendix, 8–15).

> "By the Act of February 27, 1801, by which Congress assumed jurisdiction over this District, justices of the peace were given cognizance of personal demands to the value of twenty dollars.
>
> "By the Act of March 1, 1823, their jurisdiction was extended to cases involving fifty dollars. And here Congress was confronted with the Seventh Amendment to the Constitution guaranteeing the right to trial by jury in controversies involving more than twenty dollars. Accordingly, the 15th and 16th sections of the act are an attempt to reconcile the summary jurisdiction of the justice with the constitutional requirement. Whether it was a success is a question of no little gravity and importance.
>
> "The Seventh Amendment to the Constitution reads as follows:
>
> "'In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.'
>
> "I am not aware of any decisions in the Federal courts that throw any light on the questions presented in the present proceeding. But the State constitutions contain provisions similar to, and almost identical with, the Seventh Amendment,

which have been the subject of discussion and construction in the State courts.

"Thus, in Murphy *vs.* People, 2 Cow. 815, decided in 1824, it was held that a constitutional provision that 'the trial by jury *in all cases in which it has been heretofore used*, shall remain inviolate *forever*,' secured the right *as it existed when the Constitution was adopted, only*, and did not prohibit the trial of petty larcenies by the practices, which had theretofore been the practice in New York.

"In Ross *vs.* Irving, 14 Ill. 171, decided in 1852, it was held that the constitutional guaranty that 'the trial by jury shall remain inviolate,' only preserved it *as it existed when the Constitution of the State was adopted*, and did not apply to the case, provided for by statute, of the assessment, in case of recovery of land from a *bona fide* holder, of the value of his improvements, by a proceeding out of court.

"In Tims *vs.* State, 26 Ala. 165, decided in 1855, it was held that the constitutional guaranty of trial by jury *in all prosecutions*, etc., did not apply to *offenses created by statute since the adoption of the Constitution*, but it was within the power of the legislature to make such an offense triable before a justice of the peace, without indictment.

"In People *vs.* Fisher, 20 Barbour, 652, it was held that the clause of the Constitution of New York which secured a trial by jury to an accused person '*refers as well to incidents of the trial as to the number of men necessary to constitute the jury. It means a trial upon presentment or indictment of a grand jury, and in a court of record and common law jurisdiction. A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure. It is not true that making the jury to consist of twelve men constitutes a common law trial.*' It was therefore held that the constitutional provision as to jury trial applied only to capital or infamous offenses which the Constitution required to be tried in the regular common law courts, and not to minor offenses which were left to be provided for by the legislature, and might be made triable in the inferior courts.

"In Koppicus *vs.* State Capital Commissioners, 16 Cal. 248, decided in 1860, it was held that the provision in the constitution of California that 'The right of trial by jury shall be secured to all and remain inviolate forever' applies only to civil and criminal cases *in which an issue of fact is joined*, and that an inquiry of damages with reference to property taken for public use is not an action at law in that sense.

"In Mead *vs.* Walker, 17 Wis. 195, decided in 1862, it was held that the article in the constitution of Wisconsin, which declares that 'The right of trial by jury *shall remain inviolate and extend to all cases at law without* regard to the amount in controversy,' was designed to secure the right to a jury trial only in *those cases where it could be had by law when the constitution was adopted*, and did not prevent compulsory references in actions involving the examination of long accounts, which had been in vogue under territorial laws.

"In Byer *vs.* Davis, 42 Penn. St. 89, decided in 1862, it was held that the constitutional provision that 'the trial by jury *shall be as heretofore* and the right thereof shall remain inviolate' was only intended to preserve the right '*as it existed at the formation of the State government*,' and not to extend it; for which reason the conviction of professional thieves and vagrants by the mayor of a town was not forbidden by it.

"In Trigally *vs.* Mayor of Memphis, 6 Cold. (Tenn.) 382, decided in 1869, the constitutional provision being that 'the right of trial by jury shall remain inviolate,' it was held, as the settled construction, that the right was to remain inviolate *as it existed at the formation of the constitution*, and that cases which before the constitution were not triable by jury need not be made so now; and therefore a conviction of drunkenness before the commissioner of police was sustained.

"In Whitehurst *vs.* Coleen, 53 Ill. 247, decided in 1870, the same rule was applied to enforcing payment against a security for costs, without trial by jury.

"In Knight *vs.* Campbell, 62 Barbour, 16, decided in 1872, it was held that the amendment to the code, extending the jurisdiction of justices of the peace to actions of replevin was not void as against the constitutional provision for jury trial for reason that the justice had a jury of six only, inasmuch as such justice's courts were *in existence when the Constitution was adopted* and the Constitution did not intend to prevent the creation of new inferior tribunals or the enlargement of the jurisdiction of those in existence.

"In Blanchard et al. *vs.* Raines, 20 Fla. 467, decided in 1884, it was held that the constitutional requirement that 'the right of trial by jury shall remain inviolate' does not give such a right where it did not exist before, and is not infringed by a law providing for distress by a landlord for rent and advances, the right of replevying being reserved to the tenant.

"In Rhines *vs.* Clark, 51 Penn. St. 96, decided in 1885, the court said: 'Doubtless the legislature may withhold trial by jury from the new offenses created by statute and unknown to the common law, as in the instance of the Sunday law and numerous enactments in the nature of police regulations for the preservation of the public peace. So may trial by jury be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the *justices hundred dollar law*, and of the authorities that enforce the liability of counties for property destroyed by mobs (5 Barr. 208); and also from proceedings which, though in the common law courts are out of the course of the common law, as in motions for summary relief against judgments. . . . The proceedings in our orphans' courts, and many of those in our quarter sessions, are examples of this nature. In all these instances it is no invasion of the rights of the citizen to withhold trial by jury and provide some other mode for trying contested cases because heretofore, *i. e.*, at the common law, which antedated our Constitution, trial by jury did not exist in such cases.'

"Similar rulings will be found in State *vs.* Glenn. 54 Md. 572; McGear *vs.* Woodruff, 4 Vroom, 213, and State *vs.* Conlin, 27 Vermont, 218.

"It will be observed that these decisions all go in the direction of assigning limits beyond which the right of trial by jury shall not go, instead of expressly indicating the extent to which it *shall* go. But the implication throughout is that the trial by jury as known and practiced when the several constitutions were adopted, which was undoubtedly everywhere the common law jury trial, is the trial guaranteed to the citizen.

"And there is no reason why the same construction should not be given to the Constitution of the United States. The language of the State constitutions generally is, that the right of trial by jury *shall be inviolate*, and sometimes that it shall be *as heretofore*. That of the Federal Constitution is that 'it shall be preserved.' It is substantially the same in both. That only can be *preserved* which is already in existence; so that the existing system of jury trial must have been intended to be perpetuated.

"The question presents itself, To what existing system of jury trial the Constitution refers?

"The United States having had no existence before the Constitution was adopted, there was no common law of the United States and no judiciary history of the United States to which reference could be made for the meaning of the terms 'trial by jury.' But it is well known that the Constitution was framed by men familiar with the common law of England; that its language was borrowed from that source, and in many of its parts can only be interpreted by reference to that system. The Seventh Amendment, in terms, refers to the *common law* incidents of trial by jury; and it is evident that the trial by jury, as known to the common law of England, was the institution intended to be perpetuated. This is especially apparent when we consider that the common law jury trial was in existence in all the States which adopted the Constitution. The judicial power of the Federal Government was to be exercised through the Federal courts of the States, and it was in these courts that citizens of the State were promised the continued employment of that mode of vindicating their rights of person and property to which they

had been accustomed, and which they had inherited from their mother country.

"What the common law jury trial was, can not be a subject of misunderstanding. It was a trial of issues of fact by a jury of twelve men in a court of common law jurisdiction and under the direction of the court, in which the jury were bound to follow the instructions of the court in matters of law, and in which the verdict of the jury might be set aside and a new trial awarded upon various grounds, such as misconduct of the jury, their failure to follow instructions of the court, or newly discovered evidence, etc.

"In all actions at common law, as distinct from suits in equity, this was the form of trial by which the British subject was entitled to have his rights determined. And this right exists throughout the States in this country.

"It is especially to be noted that the State of Maryland, in her Declaration of Rights, adopted in November, 1776, asserted 'that the inhabitants of Maryland are entitled to the common law of England and *the trial by jury according to the course of that law.*' And this is part of the heritage of this people of this District.

"In this connection, the language before cited from 20th Barbour is seen to be especially appropriate. The clause securing the trial by jury, it says, '*refers as well to all other incidents of the trial as to the number of men necessary to constitute the jury. . . . A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure.*'

"A critical examination of the Seventh Amendment will compel us to the conclusion that the common law trial by jury, as I have described it, must be the one intended to be guaranteed.

"There are two clauses in the amendment, so connected by the copulative, 'and,' that they may be read as one sentence. 'The right of trial by jury shall be preserved *and* no fact tried by a jury shall be otherwise re-examined, than according to the rules of the common law.' The jury of the first clause is

evidently the same one to whose finding the conclusive effect is given by the second. The sense is the same as if it read 'The right of trial by *a* jury shall be preserved, and no fact found by *such* jury shall be re-examined, etc.'

"The second clause, in prohibiting a re-examination of a fact found by a jury *otherwise than* according to the rules of the common law, assumes or impliedly concedes the right to have this re-examination according to the rules of the common law.

"But, as we have seen, such a proceeding is unknown to the common law except in the case of a common law jury in a court of common law jurisdiction, where the trial is conducted under direction of the court, and the jury are bound to receive instructions as to the law from the court, and their verdict is liable to be set aside by the same court. It would seem therefore to follow necessarily that such a trial by jury is the kind to which the guaranty of the first clause of the Seventh Amendment is applicable. In other words, the jury guaranteed by the Seventh Amendment is one whose finding of fact can be re-examined according to the rules of the common law.

"It will be observed that several of the decisions before referred to are peculiar.

"Thus in Rhines *vs.* Clark, 51 Penn. St., it was said that trial by jury may be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the justices hundred dollar law; that is to say, apparently, that the constitutional guaranty applied only to the common law courts, and did not prevent the legislature from transferring certain subjects of jurisdiction from the superior courts to inferior courts not having the common law jury.

"And a similiar ruling was had in Knight *vs.* Campbell, *supra.*

"*But our Seventh Amendment would not admit of a similar interpretation, as it describes the class of cases in which a jury trial is guaranteed. They are all suits at common law—as distinct from suits in equity—in which the matter in controversy exceeds $20. It could not be con-*

tended that Congress may withdraw such suits from the common law courts and transfer them to the justices of the peace without a jury. The pecuniary limit of their jurisdiction was enlarged, first, to cases involving $50, then to $100 and finally to $300, and there is nothing to prevent it from being carried up into the thousands.

"And if this can be done without providing for trial by a common law jury, it is evident that the constitutional requirement can be completely evaded and nullified.

"In the Act of March 1, 1823, by which the jurisdiction of the justices was extended to cases involving $50, Congress recognized the constitutional obligation to secure the right of trial by jury.

"But, unfortunately, the jury provided for in said act does not correspond with its common law exemplar. This act and the subsequent legislation still further extending the jurisdiction of the justice have created a very anomalous condition of things. In cases involving any amount between $50, [$100], and $300 a plaintiff has his choice of forums. He may sue in this court, in which case his demands will be passed upon by a common law jury under instructions from the court, and, for good reasons, a verdict may be set aside and a new trial ordered; in addition to which he may except to the rulings of the court and have an appeal to a higher court.

"On the other hand, if he brings suit before a justice and a jury trial is demanded, his case is tried by the jury according to their own notions of the law and the fact. They are not bound to follow any instructions, and their verdict can not be set aside, and according to past rulings there is no appeal.

"It is very evident that this is not the jury trial to which a party is entitled, and one who is subjected to such a proceeding against his will is entitled to relief in some form or other, either by having it arrested entirely or by having the feature of finality taken from it."

What Justice Cox has said is reinforced by the distinction hereinbefore made in this brief as to the great difference in England between the law administered in the king's courts and the law administered outside of them.

But from all this it is evident that a common law jury can not be constituted before a justice of the peace, who can only decide upon matters involving small debts, who is strictly commanded by law to decide according to a mixed standard of law and equity, who can not instruct the jury and who has no power to set aside a verdict and grant a new trial.

E.

There is another constitutional objection to this act which has not yet been adverted to, but which seems to counsel to have great force. It will be recollected from the passage already cited from Blackstone, that the courts of conscience were directed to make such order "*as is consonant to equity and good conscience.*" This power was referred to by Blackstone as a large, discretionary power, "dangerous in that it might create a petty tyranny."

According to this very act under controversy, of March 1, 1823, the justices are empowered to give judgment "according to law and the equity and right of the matter." To this grant, where the amount claimed is above $20, two grave constitutional objections apply.

The first of these is that so much of the act as authorizes the justices to determine the matter otherwise than according to the rules of the common law contravenes the distinction recognized in the Constitution between law and equity. This has been well expressed by Mr. Justice Daniel, delivering the opinion of this court, in the case of Fenn *vs.* Holme, 21 Howard, pp. 484–487:

> "By the Constitution of the United States, and by the acts of Congress organizing the Federal courts, and defining and investing the jurisdiction of these tribunals, the distinction between common law and equity jurisdiction has been explicitly declared and carefully defined and established. Thus, in section 2, Article 3, of the Constitution, it is declared that 'the judicial power of the United States shall extend

to all cases in *law* and *equity* arising under this Constitution, the laws of the United States,' etc.

"In the act of Congress 'to establish the courts of the United States,' this distribution of law and equity powers is frequently referred to; and by the 16th section of that act, as if to place the distinction between those powers beyond misapprehension, it is provided 'that suits in equity shall not be maintained in either of the courts of the United States in any case where plain, adequate and complete remedy may be had at law,' at the same time affirming and separating the two classes or sources of judicial authority. In every instance in which this court has expounded the phrases, proceedings at the common law and proceedings in equity with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to rights and obligations essentially legal; and the latter, as meaning the administration with reference to equitable as contradistinguished from legal rights, of the equity law as defined and enforced by the Court of Chancery in England.

"In the case of Robinson *vs.* Campbell, 3 Wheat., on page 221, this court have said: 'By the laws of the United States, the circuit courts have cognizance of all suits of a civil nature at common law and in equity, in cases which fall within the limits prescribed by those laws. By the 24th section of the judiciary act of 1789 it is provided, that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply. The Act of May, 1792, confirms the modes of proceeding then used at common law in the courts of the United States, and declares that the modes of proceeding in suits in equity shall be according to the principles, rules, and usages, which belong to courts of equity, as contradistinguished from courts of common law, except so far as may have been provided for by the act to establish the judicial courts

of the United States. It is material to consider whether it was the intention of Congress by these provisions to confine the courts of the United States, in their mode of administering relief, to the same remedies, and those only, with all their incidents, which existed in the courts of the respective States; in other words, whether it was their intention to give the party relief *at law*, where the practice of the State courts would give it, and *relief in equity only* when, according to such practice, a plain, adequate, and complete remedy could not be had at law? In some States in the Union no court of chancery exists to administer equitable relief. In some of these States courts of law recognize and enforce in suits at law all equitable rights and claims which a court of equity would recognize and enforce; in others, all relief is denied, and such equitable claims and rights are to be considered as mere nullities at law. A construction, therefore, that would adopt the State practice in all its extent would at once extinguish in such States the exercise of equitable jurisdiction. The acts of Congress have distinguished between remedies at common law and equity, yet this construction would confound them. The court, therefore, think that to effectuate the purposes of the legislature the remedies in the courts of the United States are to be at common law or in equity—not according to the practice in the State courts, but according to the principles of the common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles.'

"In the case of Parsons *vs.* Bedford et al., 3 Peters, on pp. 446, 447, this court, in speaking of the Seventh Amendment of the Constitution, and of the state of public sentiment which demanded and produced that amendment, say:

"'The Constitution had declared, in the Third Article, that the judicial power shall extend to all cases *in law and equity* arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, &c. It is well known that in civil suits, in courts of equity and admiralty, juries do not intervene, and that

courts of equity use the trial by jury only in extraordinary cases. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that the distinction was present in the minds of the framers of the amendment. By *common law*, they meant what the Constitution denominated in the Third Article LAW, not merely *suits* which the common law recognized among its old and settled proceedings, but suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where *equitable rights* alone were recognized and equitable remedies administered.'

"'The same doctrine is recognized in the case of Strother *vs.* Lucas, in 6 Peters, pp. 768, 769 of the volume, and in the case of Parish *vs.* Ellis, 16 Peters, pp. 453, 454. So, too, as late as the year 1850, in the case of Bennett *vs.* Butterworth, reported in the 11th of Howard, 669, the Chief Justice thus states the law as applicable to the question before us:

"'The common law has been adopted in Texas, but the forms and rules of pleading in common-law cases have been abolished, and the parties are at liberty to set out their respective claims and defenses in any form they will bring them before the court; and, as there is no distinction in its courts between cases at law and in equity, it has been insisted in this case, on behalf of the defendant in error, that this court may regard the plaintiff's petition either as a declaration at law or a bill in equity. Whatever may be the laws of Texas in this respect, they do not govern the proceedings in the courts of the United States; and, although the forms of proceedings and practice in the State courts have been adopted in the District Court, yet the adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The Constitution of the United States, in creating and defining the judicial power of the General Government, establishes this distinction between law and equity, and a party who claims a legal title must proceed at law, and may undoubtedly

proceed according to the forms of practice in such cases in the State court. But if the claim be an equitable one, he must proceed according to the rules which this court has prescribed, regulating proceedings in equity in the courts of the United States.'"

See, also, Willard *vs.* Wood, 135 U. S. 309.
R. S. D. C. Section 800.

Another respect in which this provision impugns the Constitutional amendment under consideration is this: If this is a suit at law in which the plaintiff has a complete and adequate remedy, then he is entitled to the benefit of the course of the common law in the trial of the suit. But, if the case is to be tried according to the very right and equity of the matter, he does not obtain his trial according to the course of the common law. In other words, under the Amendment he is absolutely entitled to a common law trial apart from and without any equitable remedy. Upon this point counsel refer for authority, if necessary, to the case of Scott *vs.* Neely, 140 U. S. 106, and cite from the opinion of Mr. Justice Field as follows:

"In the case before us the debt due the complainants was in no respect different from any other debt upon contract; it was the subject of a legal action only, in which the defendants were entitled to a jury trial in the Federal courts. Uniting with a demand for its payment, under the statute of Mississippi, a proceeding to set aside alleged fraudulent conveyances of the defendants, did not take that right from them, or in any respect impair it.

"This conclusion finds support in the prohibition of the law of Congress respecting suits in equity. The 16th section of the Judiciary Act of 1789 enacted that such suits 'shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law;' and this prohibition is carried into the Revised Statutes, (Sec. 723). It is declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England, and always in

this country. And so it has been often adjudged that whenever, respecting any right violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional right to a trial by jury, but because of the prohibition of the act of Congress to pursue his remedy in such cases in a court of equity. Hipp *vs.* Babin, 19 How. 271, 278; Lewis *vs.* Cocks, 23 Wall. 466, 470; Killian *vs.* Ebbinghaus, 110 U. S. 568, 573; Buzard *vs.* Houston, 119 U. S. 347, 351. *All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for a breach of a simple contract, or as damages for injury to person or property are legal actions, and can be brought in the Federal courts only on their law side. Demands of this kind do not lose their character as claims cognizable in the courts of the United States only on their law side, because in some State courts, by virtue of State legislation, equitable relief in aid of the demand at law may be sought in the same action. Such blending of remedies is not permissible in the courts of the United States.*

"In Bennett *vs.* Butterworth, 11 How. 669, 674, in commenting upon the practice prevailing in the courts of Texas, Mr. Chief Justice Taney, after observing that although the common law had been adopted in Texas, the forms and rules of pleading in common law cases had been abolished, and the parties were at liberty to set out their respective claims and defenses in any form that would bring them before the court, said: 'Although the forms of proceedings and practice in the State courts have been adopted in the District Court, yet the adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The Constitution of the United States, in creating and defining the judicial power of the general government, establishes this distinction between law and equity; and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in

such cases in the State court. But if the claim is an equitable one, he must proceed according to rules which this court has prescribed (under the authority of the Act of August 23, 1842), regulating proceedings in equity in the courts of the United States.'

"This decision was followed in Thompson *vs.* Railroad Companies, 6 Wall. 134, 137, the court there observing that 'the remedies in the courts of the United States are, at common law or in equity, not according to the practice of the State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles,' citing also to that effect the case of Robinson *vs.* Campbell, 3 Wheat. 212. In Fenn *vs.* Holme, 21 How. 481, 484, 486, the same doctrine was affirmed.

"'The Code of Mississippi gives to a simple contract creditor a right to seek in equity, in advance of any judgment or legal proceedings upon his contract, the removal of obstacles to the recovery of his claim caused by fraudulent conveyances of property. There the whole suit, involving the determination of the validity of the contract, and the amount due thereon, is treated as one in equity, to be heard and disposed of without a trial by jury. It is not for us to express any opinion of the wisdom of this law, or whether or not in its operation it is more advantageous to the interests of justice than an entire separation of proceedings at law from those for equitable relief. It is sufficient that under the statute of the United States such separation is required in the Federal courts and by the Constitution, in cases at common law, a right to a trial by jury is secured to the defendant."

Therefore, for these additional reasons the act in question is unconstitutional.

F.

A justice of the peace can not unreservedly be called a judicial officer of the United States. As we have seen, his court has never been considered a court of law.

Weikel *vs.* Cate, 58 Md. 105.

As we have also seen, his court administers a mixed system of law and equity, which no United States court can do under the authorities cited.

In this connection it is worthy of note that in Maryland the jurisdiction of the court of chancery was by law limited to matters involving at least five pounds and one penny in money (about $20).

Act of Assembly of 1777, C. XLI. 1 Kilty's Laws.
Hollohan *vs.* Young, 21 D. C. Rep. 183.

In cases involving less, the justice of the peace gave relief upon equitable principles.

His court is not a court of record, and all courts proceeding according to the course of the common law are courts of record.

Ex parte Gladhill, 8 Met. 170.

His qualifications are not those of a judicial officer. By Act of Congress of February 27, 1801 (2 Statutes at Large, 107), it is provided that:

> "There shall be appointed, in and for each of the said counties, such number of *discreet persons* to be justices of the peace as the President of the United shall, from time to time, think expedient," etc.

In Maryland judicial appointees were required by law to be "persons of integrity, and sound legal knowledge."

Act of Assembly of 1804, Ch. LV. 1 Kilty's Laws.

While in the Constitution of the United States no express provision is made that the judges of the Supreme Court and of such inferior courts as that instrument contemplates shall be men learned in the law, yet such qualification has always been assumed as necessary.

The true position of a justice of the peace has been well defined in the dissenting opinion of Alvey, C. J., as follows (R. 27.):

> "A justice of the peace appointed for this District was recognized and defined by the Supreme Court as an officer of the Government of the United States. This was held in the case of Marbury *vs.* Madison, 1 Cr. 137, and in the subsequent case of Wise *vs.* Withers, 3 Cr. 331, where the question was whether a justice of the peace in this District was an officer, judicial or executive, of the Government of the United States, and thus entitled to exemption from military duty. Mr. Chief Justice Marshall, in delivering the opinion of the court, said: 'If a justice of the peace is an officer of the Government of the United States, he must be either a judicial or an executive officer. In fact, his powers, as defined by law, seem partly judicial and partly executive. He is, then, within the letter of the exemption, and, of course, must be considered as comprehended within its proper construction, unless there be something in the act which requires a contrary interpretation.' The justice of the peace was held to be exempt from military duty.
>
> "It is very clear, however, that a justice of the peace in this District is not a judicial officer within the meaning or contemplation of the Constitution of the United States. He is not a judge of a tribunal inferior to the Supreme Court, within the meaning of the Constitution. He is not a judge in any constitutional sense; his proceedings are not according to the course of the common law, and are not matters of record, according to the meaning given by the common law. His jurisdiction in civil matters is purely statutory, and are of a summary

character, intended to bring justice home, in matters of small amount, to every man's door, and to dispense with delays and expensive process of the ordinary courts of record."

G.

What did Congress intend by the provisions in question of this Act of March 3, 1823?

Unfortunately, such annals as were then kept furnish only a very meagre report of their proceedings. While the measure was much debated, yet the details of the debate are not given. At page 267 of the Annals of Congress, Seventeenth Congress, Second Session, we find this entry relating to the bill in question:

> "On this bill a good deal of debate took place, as well on its details, to which amendments were offered, as on its constitutionality and expediency."

At page 270 of the same publication there is this entry:

> "Various other amendments (to the bill in question) were offered, some of which were agreed to and others lost. Amongst those which were unsuccessful was one offered by Mr. Southard, which proposed to strike out all of the bill allowing a jury trial before a justice of the peace, and substituting sections, providing that where the parties to a debt above $20 did not consent to waive a jury trial, then the case should be referred to the court of the county."

Careful search among the files of the Senate and House of Representatives has secured the original papers, which are printed as Appendix II to this brief. Upon reference to pp. 1–8 of this Appendix it will be found that the bill in question was introduced into the House of Representatives as H. R. No. 39. As originally presented it did not provide for a jury trial, but did provide for an appeal to the old circuit court in all cases involving at least five dollars. Section 15 of the amended bill (pp. 6, 7, Appendix II), provided

for a jury trial. That this amendment was introduced to meet the supposed requirements of the Seventh Amendment to the Constitution of the United States appears from the letter of Mr. Deneale (p. 13, Appendix II).

That the constitutional objections to the bill as amended, which have been insisted on in this brief, were then foreseen and urged, is evident from the words of the protests against the passage of the bill printed on pages 17–19 of Appendix II, signed by such eminent members of the old bar as Philip R. Fendall, Thomas Swann and others. At page 32 is printed the protest signed by the late General Walter Jones, perhaps the ablest lawyer whom this District has produced, insisting—

> "that the jury trial, therein provided, has no tendency to subserve the purposes for which it was designed, and may be productive of great inconvenience and abuse."

Especially worthy of consideration are the words of the "petition and remonstrance" contained on pages 34–36 of Appendix II. A keynote is struck when the protestants urge that this act—

> "deprives the party of the right to bring originally his case of fifty dollars value *before a more competent tribunal.*"

Again at page 36 they insist that—

> "the trial by jury as given by this bill (is) the mere shadow of the jury trial, or worse than not having such a trial at all."

But the most impressive of these protests is found in that presented to the Senate and contained at pages 46–48 of Appendix II.; the reasoning of this last is an epitome of the whole argument against the constitutionality of the act in question.

Petitions were also presented in favor of the passage of

the bill. In one of these (Appendix II., p. 24), it is asserted that the constitutionality of the act under discussion has been established by—

> "the decisions of twenty-one, if not twenty-three of the States and Territories, in their legislatures and courts; and by a decision of the Supreme Court in a case which involved the same principle."

Counsel have been unable to verify this assertion.

It is evident from the language of some of these protests (Appendix II., pp. 35, 47), that it was supposed that upon an appeal a second jury would pass again upon the case. The strictures then made upon such a jury trial before a justice of the peace as Cranch, C. J. gave his sanction to and as the practice of so many years confirmed, are not less severe than those of Bradley, J. (Appendix, p. 3), and of the opinion of the majority of the Court of Appeals (R. 17), already quoted (*supra* p. 11).

Upon the foregoing information it would seem that a second jury trial on appeal was intended by the legislation in question.

H.

Would the constitutional objections to this law be removed by allowing this appeal to a second jury?

Alvey, C.J., and Cox, J., think that such would be the case. But it must be remembered that neither of them had argued before him the point concerning the peculiar jurisdiction of a justice of the peace under statutory law. This same jurisdiction is exercised by mandatory and explicit law upon the hearing of the appeal. It was so in Maryland. By the Act of Assembly of 1791, Ch. LXVIII, Sec. IV, it was provided that the justices of the county court should determine such appeal "according to the law of the land and the equity and right of the matter."

1 Kilty's Laws.

By section 7 of the Act of Congress of March 3, 1823, it was provided that upon appeal the judges of the old Circuit Court of the District of Columbia should determine the said appeal "in a summary way . . . according to law, and the equity and right of the matter."

3 Statutes at Large, p. 743.

These very words are incorporated in section 775, R. S. D. C., which is the law now in force. But, as we have seen, this is a jurisdiction not according, but contrary, to the common law, and it is a jurisdiction which a common law court can not exercise under the Constitution and laws of the United States.

In addition, however, to this objection, it is thought that Mr. Justice Bradley has conclusively shown, in his opinion in the case of Kengla *vs.* Booth (Appendix, p. 19), that the right of appeal allowed by law in this District is so hampered by conditions as to destroy the freedom of appeal. The law writers speak of "an unclogged and unfettered right of appeal."

Hare's American Constitutional Law, p. 867.

Again, it is said:

> "A clog on the right of appeal may, agreeably to the same authorities, be equivalent to a denial; and such will be the effect of requiring a kind or amount of security which the appellant can not reasonably be expected to give." *Ibid.*

Jones *vs.* Robbins, 8 Gray, 329, 343.
Saco *vs.* Wentworth, 37 Me. 165, 172.
Plimpton *vs.* Somerset, 33 Vt. 283.
Rednor *vs.* Warner, 22 Ohio St. 275.
Greene *vs.* Briggs, 1 Curtis, 311.
In re Dana, 7 Benedict, 14.

Finally, the authorities cited by Mr. Justice Harlan in delivering the unanimous opinion of this court in the case of

Callan *vs.* Wilson, 127 U. S. 540, and the reasoning of the learned justice, are not confined to criminal cases. While it is true, as Mr. Chief Justice Alvey suggests in his dissenting opinion (R. 29), that the Supreme Court were in that case interpreting the language of the second section of the third Article of, and of the Sixth Amendment to, the Constitution, and we are here dealing with the language of the Seventh Amendment, nevertheless it is difficult to believe that the right to a jury trial was meant by the framers of this language to be absolute as to crimes and only conditional and secondary as to property and reputation. It is submitted that the majority of the Court of Appeals (R., pp. 24, 25), have correctly apprehended and expressed the true meaning of the decision in Callan *vs.* Wilson.

But again, the right of appeal is not an absolute right, nor is it a fixed one. Now the law gives it; tomorrow it may take it away. Now it is fixed at $5; tomorrow it may be fixed at $300. Can the constitutional right to a jury trial depend on legislative favor?

I.

Is any useful purpose to be served by preserving a useless and questionable form?

For the purpose of enforcing this question it is only necessary to refer to the consensus of opinion disclosed in this record, and in the judicial opinions and protests contained in Appendices I and II to this Brief. Attention is especially called to the language of the majority of the Court of Appeals at pages 16, 17 and 24 of the Record.

J.

It may be true that grave inconvenience will result from the judicial determination that justices of the peace in the District of Columbia have not and have never had jurisdiction to try causes involving more than $20.

With respect to the past, it is not thought that the title to any save very inconsiderable real estate will be affected. Sales of lots of ground under executions levied by constables have been of the rarest occurrence. The statute of limitations would prevent litigation here as also in the case of levies upon and transfer of personal property under judgments of these justices involving more than $20. Of this and other inconveniences it must, however, be said that justice is to be done notwithstanding their existence.

As to the failure of remedy in cases involving amounts between $20 and $100, there are several considerations to be taken into account.

1. The Supreme Court of the District of Columbia is the inheritor of the jurisdiction of the Court of King's Bench, and the fact that there is no jurisdiction elsewhere is enough to give it jurisdiction.

Newmeyer *vs.* Cowling, 6 Mackey, 504.

2. From the reasoning of Cox, J., in the case just quoted, it would seem to follow that as the law taking away jurisdiction from the common law court and giving it to the special court was invalid, the prior jurisdiction of the common law court has never been disturbed. If it be said that so much of the law as takes away jurisdiction is valid, even though that part which confers this same jurisdiction on justices of the peace is invalid, it may be answered that the legal consideration for, and motive of, the act failed when the transfer of jurisdiction failed. This court will never sustain a part of an unconstitutional act while invalidating another part which was the legal inducement and purpose for the passing of the whole act.

3. At the worst, only a brief time should be required for the establishing by Congress of a municipal court with judges learned in the law, proceeding according to the

course of the common law, having a seal, and competent under the Constitution to hear such cases with a common law jury.

K.

If Congress could lawfully take away from citizens of this District the right to a common law trial of cases involving less than $50 in 1823, it could lawfully take that same right away in cases involving less than $100 in 1867, and in cases involving less than $300 in 1895. It may lawfully hereafter take away this same right in cases involving $500 or $5,000. When the principle is once admitted, its results are inevitable.

R. ROSS PERRY,
Attorney for Plaintiff in Error.

APPENDIX.

Opinions of Justices Cox and Bradley, of the Supreme Court of the District of Columbia, Concerning Jury Trials before Justices of the Peace in said District.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

UNITED STATES, EX REL. BRIGHTWOOD RAILWAY COMPANY, *vs.* LEWIS I. O'NEIL.	At Law. No. 40,000.

PETITION for writ of *mandamus* to compel respondent, a justice of the peace, to approve an appeal bond. *Denied and petition dismissed.* Decided June 17, 1896.

Mr. Justice BRADLEY delivered the opinion of the Court:

This is a petition for a writ of *mandamus* to compel the respondent, Lewis I. O'Neil, a justice of the peace, to approve an appeal bond tendered for approval and approval declined solely on the ground that the case had been tried by jury. No objection is made to the bond itself. The parties to the record have sought to raise the one question, whether the judgment in the case is appealable.

The question has been several times decided in the negative by the former Circuit Court of the District of Columbia. Davidson *vs.* Burr, 2 Cr. C. C. 515; Maddox *vs.* Stewart, Id. 523; Denny *vs.* Queen, 3 Cr. C. C. 217; Smith *vs.* Chase, Id. 348.

It has also been decided by this court in general term. Fitzgerald *vs.* Leisman, 3 MacA. 6.

These decisions compel me to the same conclusion of the question. If, however, it were an original question, and one of the first impression with me, I can see strong reasons for reaching the opposite conclusion.

The Act of Congress of March 1, 1823 (3 Stat. 743), gave justices of the peace exclusive jurisdiction to the extent of

$50. That act is quite comprehensive. It contains 17 sections regulating the powers and duties of that officer, and the practice before him in the recovery of debts.

Section 15 gives the right to demand a jury trial to either party, where the sum demanded shall exceed $20, and the succeeding section requires the justice to give judgment forthwith upon the verdict when rendered, and authorized him to issue "execution on said judgment in the same manner and under the limitations hereinbefore directed."

Preceding sections authorize *supersedeas* of *all* judgments, the issuance of execution and the levy thereof after the expiration of *supersedeas*.

Section 7 allows an appeal in "*all* cases where the debt or demand both exceed the sum of $5."

The Act of February 22, 1867, regulated the right of appeal, and required an appeal bond as a condition to such appeal. (See Sec. 1028, R. S. D. C.) The condition of the bond to be given was modified by Act of Congress, February 19, 1895. Save in the particular requiring an appeal bond, and in prescribing the character of the condition of the bond, no legislative change has been made in the right of appeal since March 1, 1823. The sections authorizing trial by jury and regulating such trial are unchanged and continue in Secs. 1009–1017, R. S. D. C. There has been no legislative declaration excluding the right of appeal from cases that have been tried by jury. Inasmuch as the Act of 1823 appears to be devised as a complete scheme for regulating the powers, duties and practice of a justice, and it confers the right of jury trial, and the right of appeal without express exclusion, I am of opinion that Congress intended that the right of appeal should exist in "*all cases*" in which judgment for an amount exceeding $5 should be entered up by the justice, including those in which there should be a jury trial and verdict.

In the cases cited, the right has been denied because of the supposed inhibition of Article VII of the Amendments to the Constitution. In Smith *vs.* Chase the court reasons that in cases tried by jury the right is not intended, because it is only given to him who is "aggrieved by the judgment of the justice," "not by the verdict of the jury." That "no man can think himself aggrieved by the judgment of a justice who exercises no judgment at all; no discretion; no choice; no will."

The court attributed to Congress the use of the word judgment in the sense of mental operation rather than judicial sentence. Such an argument is too trivial for serious consideration.

In Denny *vs.* Queen it is held that a justice of the peace is not a court of record, and that a writ of error based upon a bill of exceptions will not lie.

In Smith *vs.* Chase, Cranch, C. J., passing upon the respective powers of the justice and jury, says substantially: Upon demand of trial by jury the cause is taken entirely out of the hands of the justice. He can not instruct them, or set aside their verdict and grant a new trial. He acts ministerially as the clerk of a court acts. The jury are not bound by his opinion upon matters of law. He has no right to say what evidence they shall hear. They are to try the matters in difference between the parties whether matter of law or matter of fact.

In brief it is held that the jury are supreme judges not only of the fact but of the law. They are beyond all regulation or direction in the matter of the receipt and consideration of evidence. Their whims, caprices, passions, and prejudices have unfettered sway in reaching a conclusion upon the evidence, and they are subject to no control except a sort of police supervision which keeps them together until they reach a verdict.

If their verdict is not justified by the evidence, if it is based upon incompetent evidence; if it is palpably the result of passion, or prejudice, or fraud, it is said that the injustice must stand, because the justice of the peace before whom the case is tried has no power to set aside the verdict and grant a new trial, inasmuch as such power is not given him by statute, and the trial is not according to the course of the common law; a writ of error will not lie because the justice is not a court of record; and an appeal although given by statute, is inhibited by the Constitution.

Such a state of affairs was sufficiently mischievous when the extreme possibility in amount was $50. With the increased jurisdiction of the Act of 1895, the mischief is multiplied six times. In view of this circumstance and of the recent decision of the Court of Appeals which has deprived such litigants of the right to have removed to this court, upon a writ of *certiorari*, cases of which it has concurrent jurisdiction of the amount claimed, the reconsideration of

the question of this right of appeal would seem to be imperative.

The case of Parsons *vs.* Bedford, 3 Pet. 433, is the authority for the conclusions reached in Chase *vs.* Smith, and in Fitzgerald *vs.* Leisman. This case originated in the State of Louisiana, and was a proceeding instituted by petition for attachment, under the laws of that State. It was removed to the District Court of the United States, and tried before a jury. By the State law it was provided that in any cause submitted to a jury in which an appeal would lie to the Supreme Court on the demand of either party, the verbal evidence should be written out by the clerk in order to send it to the Supreme Court as a statement of facts. An Act of Congress of 1824 required the practice of the State courts to be followed in United States courts. The defendant demanded that the evidence should be reduced to writing by the clerk, but this was refused by the court. This was assigned as error. Story, J., in delivering the opinion of the court, held that it was not the intention of Congress to give absolute force to State methods of procedure, that the facts could not be certified to the Supreme Court for review, and thus creating a different practice in cases from Louisiana from that obtaining in cases coming from other States.

He adverted to the fact that there was a motion for new trial which was overruled by the court below, that the bills of exceptions show that no exception was taken to the admission or rejection of evidence, that no charge to the jury was asked, and that the only error alleged was that mentioned above. This he holds to have been no error.

He divides the 7th Amendment of the Constitution into two distinct provisions. One preserving the right of trial by jury, the other prohibiting the re-examination of a fact once tried by a jury otherwise than according to the course of the common law—a distinct provision. The latter he interprets as prohibiting the re-examination of any facts tried by a jury. The language of the court is broad enough to cover facts determined by the verdict of an undirected, unguided, uncontrollable jury of a justice of the peace of this District, but the court was dealing with the case of a jury trial under the direction and control of a court of record, that court having power to grant a new trial; and the case was there upon a writ of error and a bill of excep-

tions. Its language should be limited by the situation. Although the case below did not originate as a common law action, the trial was according to the course of the common law in all essential matters. McLean, J., dissenting, says, the 2d clause of the 7th Article refers to the 1st clause of the sentence which limits the trial to suits at common law, and he adds "if this were not the true construction of the sentence facts found by a jury in an issue directed by a court of chancery would be conclusive on the chancellor."

In their brief in that case Messrs. Webster & Livingston say: "The amendment was adopted when all the proceedings in the courts of the United States and in the courts of the different States were under the common law." "It was intended to guard the rights of citizens *proceeding according to the common law.*"

The language of Justice Story is broad enough to apply to the verdict of a jury under an inquisition *de lunatico* in this District, and to the power of the chancellor upon the return of the inquisition to set aside the verdict upon re-examination of the facts (Alex. Ch. Pr. 222–227). A power never questioned to my knowledge.

Another instance in which the Supreme Court of the United States has had occasion to consider this question is the case of The Justices *vs.* Murray, 9 Wall. 274; and the court cites with approval the case of Parsons *vs.* Bedford. The facts of this case indicate that the defendant in error was sued in the State court of New York for assault and battery and false imprisonment. The case was tried before a jury and a verdict was recovered against him. A writ of error was then issued from the Circuit Court of the United States for the Southern District of New York to the trial court, under the provisions of the Act of Congress of March 3, 1863, authorizing such writ within six months after judgment, and a trial *de novo* in any case against an officer, civil or military, for any arrest or imprisonment during the rebellion by virtue or under color of any authority by or under the President of the United States. So much of such act as provides for removal and retrial of a cause that had been tried by a jury was declared to be unconstitutional.

In this case there had been a trial according to the course of the common law, and it was a suit at common law.

Justice Nelson remarks: "The terms of the Amendment

are general, and contain no qualifications in respect to the restriction upon the appellate jurisdiction of the courts, except as to the class of cases, namely, *suits at common law where there has been a trial by jury.* The natural inference is that no other was intended."

As supporting the claim that the prohibited re-examination of a fact tried by a jury relates to a case tried according to the course of the common law, see Warring et al. *vs.* Clarke, 5 How. 460; In re Martin, 2 Paine, 348.

The occasion of Article 7 of the Amendments is suggested in the opinion of the court in The Justices *vs.* Murray, and in Sec. 1763 of Story's Commentaries on the Constitution. In the opinion and in the succeeding sections of Story, the 81st number of the Federalist by Alexander Hamilton is referred to, the latter work quoting from it *in extenso.* Justice Nelson remarks "that the Amendment (to the Constitution) submitted in the 1st session of Congress, by Mr. Madison, adopts the restriction suggested by Mr. Hamilton, "and almost in the same words." Mr. Hamilton's remarks in this connection, therefore, are suggestive in the effort to correctly interpret the article of the Amendments in question. After stating that in New England it was not uncommon to appeal from one jury to another, and that such an appeal is familiar both in language and practice, and even a matter of course until there have been two verdicts on a side, he says, with reference to possible Congressional limitations, "it will not answer to make an express exception of cases which shall have been originally tried by jury, because in the courts of some States all causes are tried in this mode, and such an exception would preclude the revision of matters of fact as well where it might be proper as where it might be improper." . . . "The legislature of the United States would certainly have full power to provide that in appeals to the Supreme Court there should be no re-examination of facts where they had been tried in the original causes by juries. This would certainly be an authorized exception; but if, for the reason already intimated, it should be thought too extensive, it might be qualified with a limitation to *such causes only* as are determinable at common law in that mode of trial."

It is quite plain that Mr. Hamilton was of the opinion that review or re-examination of matters of fact tried by jury, should be prohibited only in cases where there had

been a trial according to the course of the common law. It appears to be equally plain that the restriction suggested by him, embodied in the Amendment, is reasonably susceptible of but that interpretation.

It could not be claimed that a trial by a justice of the peace without a jury, under the statute, which requires him "to give judgment according to law, and the equity and right of the matter," is according to the course of the common law. Still less reason is there to claim that a jury trial before such justice, in which the justice exercises no direct or controlling function, and the jury are "a law unto themselves," reaching a verdict by their own methods and processes, which is beyond the review or re-examination of any person or court, is according to the course of the common law.

I suggest that such a trial, such a verdict, or such a situation was never contemplated by the framers of the Amendment, and that a reconsideration of this question ought to result in the overruling of the old cases.

THE CAPITAL TRACTION COMPANY
vs.
CHARLES HOF.

At Law.
No. 40,239.

PETITION for writ of *certiorari* to remove a case from a justice of the peace to this court for trial according to the course of the common law. Hearing on motion to quash the writ of *certiorari*. Decided October 6, 1896.

Mr. Justice COX delivered the opinion of the Court:

The petition, which was filed on the 8th of September, shows, in substance, that Charles Hof, on the 20th of August, last, brought suit before Lewis I. O'Neal, Esq., a justice of the peace, to recover damages to the amount of three hundred dollars; that on the 8th of September, after the petitioner had filed its plea and issue had been joined, the said Hof demanded a trial by jury of the said issue, and thereupon the said justice issued a venire to a constable to summon a jury for the trial of said suit on the 10th of September.

The petitioner further sets forth the inconveniences and and disadvantages under which it will labor in such a trial,

and claims that such a proceeding would not be the form of trial by jury to which it is entitled under the Seventh Amendment to the Constitution of the United States.

It therefore prays a writ of *certiorari* to remove the claim of Hof into this court for trial according to the course of the common law.

The *certiorari* was issued and the justice returned the record of his proceedings into this court.

A motion was then made to quash the *certiorari*, and upon this argument was heard on both sides.

In the case of Smith *vs.* Chase, 3 Cr. C. C. 348, which was the latest case in the old Circuit Court of this District, on this subject, and which was decided in 1828, that court held that a writ of error would not lie to the judgment of a justice of the peace on the verdict of a jury, and that he was not bound to sign a bill of exceptions, and they overruled a motion made in that case to compel the justice from whom an appeal had been taken to sign one.

No opinion was pronounced as that of the court, but Ch. J. Cranch delivered an opinion containing his own views and his reasons for concurring in the judgment, which, he said, were exclusively his own, and for which the court was not responsible.

This conclusion of that court has been silently acquiesced in by the profession for over sixty years. It was announced at a time when the jurisdiction of a justice of the peace extended only to cases involving not more than fifty dollars. But since the great enlargement of the jurisdiction of justices by modern legislation, in consequence of which controversies involving as much as $300 have to be submitted to the uncontrolled arbitrament of justices' juries, the profession has become impressed with the importance of re-examining questions which arose under a different condition of affairs, and which were then hardly of sufficient importance to attract the attention and consideration which they are now seen to deserve.

By the Act of February 27, 1801, by which Congress assumed jurisdiction over this District, justices of the peace were given cognizance of personal demands to the value of twenty dollars.

By the Act of March 1, 1823, their jurisdiction was extended to cases involving fifty dollars. And here Congress was confronted with the Seventh Amendment to the Con-

stitution guaranteeing the right to trial by jury in controversies involving more than twenty dollars. Accordingly, the 15th and 16th sections of the act are an attempt to reconcile the summary jurisdiction of the justice with the constitutional requirement. Whether it was a success is a question of no little gravity and importance.

The Seventh Amendment to the Constitution reads as follows:

"In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

I am not aware of any decisions in the Federal courts that throw any light on the questions presented in the present proceeding. But the State constitutions contain provisions similar to, and almost identical with, the Seventh Amendment, which have been the subject of discussion and construction in the State courts.

Thus, in Murphy *vs.* People, 2 Cow. 815, decided in 1824, it was held that a constitutional provision that "the trial by jury *in all cases in which it has been heretofore used*, shall remain inviolate *forever*," secured the right *as it existed when the constitution was adopted, only*, and did not prohibit the trial of petty larcenies by the practices, which had theretofore been the practice in New York.

In Ross *vs.* Irving, 14 Ill. 171, decided in 1852, it was held that the constitutional guaranty that "the trial by jury shall remain inviolate," only preserved it *as it existed when the constitution of the State was adopted*, and did not apply to the case, provided for by statute, of the assessment, in case of recovery of land from a *bona fide* holder, of the value of his improvements, by a proceeding out of court.

In Tims *vs.* State, 26 Ala. 165, decided in 1855, it was held that the constitutional guaranty of trial by jury *in all prosecutions*, etc., did not apply to *offenses created by statute since the adoption of the Constitution*, but it was within the power of the legislature to make such an offense triable before a justice of the peace, without indictment.

In People *vs.* Fisher, 20 Barbour, 652, it was held that the clause of the constitution of New York which secured a trial by jury to an accused person "*refers as well to incidents of the trial as to the number of men necessary to constitute the jury.*

It means a trial upon presentment or indictment of a grand jury, and in a court of record and common law jurisdiction. A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure. It is not true that making the jury to consist of twelve men constitutes a common law trial." It was therefore held that the constitutional provision as to jury trial applied only to capital or infamous offenses which the constitution required to be tried in the regular common law courts, and not to minor offenses which were left to be provided for by the legislature, and might be made triable in the inferior courts.

In Koppicus *vs.* State Capital Commissioners, 16 Cal. 248, decided in 1860, it was held that the provision in the constitution of California that "The right of trial by jury shall be secured to all and remain inviolate forever" applies only to civil and criminal cases *in which an issue of fact is joined*, and that an inquiry of damages with reference to property taken for public use is not an action at law in that sense.

In Mead *vs.* Walker, 17 Wis. 195, decided in 1862, it was held that the article in the constitution of Wisconsin, which declares that "The right of trial by jury *shall remain inviolate and extend to all cases at law without* regard to the amount in controversy," was designed to secure the right to a jury trial only in *those cases where it could be had by law when the constitution was adopted*, and did not prevent compulsory references in actions involving the examination of long accounts, which had been in vogue under territorial laws.

In Byer *vs.* Davis, 42 Penn. St. 89, decided in 1862, it was held that the constitutional provision that "the trial by jury *shall be as heretofore* and the right thereof shall remain inviolate" was only intended to preserve the right "*as it existed at the formation of the State government*," and not to extend it; for which reason the conviction of professional thieves and vagrants by the mayor of a town was not forbidden by it.

In Trigally *vs.* Mayor of Memphis, 6 Cold. (Tenn.) 382, decided in 1869, the constitutional provision being that "the right of trial by jury shall remain inviolate," it was held, as the settled construction, that the right was to remain inviolate *as it existed at the formation of the constitution*, and

that cases which before the constitution were not triable by jury need not be made so now; and therefore a conviction of drunkenness before the commissioner of police was sustained.

In Whitehurst *vs.* Coleen, 53 Ill. 247, decided in 1870, the same rule was applied to enforcing payment against a security for costs, without trial by jury.

In Knight *vs.* Campbell, 62 Barbour, 16, decided in 1872, it was held that the amendment to the code, extending the jurisdiction of justices of the peace to actions of replevin was not void as against the constitutional provision for jury trial for reason that the justice had a jury of six only, inasmuch as such justice's courts were *in existence when the Constitution was adopted* and the Constitution did not intend to prevent the creation of new inferior tribunals or the enlargement of the jurisdiction of those in existence.

In Blanchard et al. *vs.* Raines, 20 Fla. 467, decided in 1884, it was held that the constitutional requirement that "the right of trial by jury shall remain inviolate" does not give such a right where it did not exist before, and is not infringed by a law providing for distress by a landlord for rent and advances, the right of replevying being reserved to the tenant.

In Rhines *vs.* Clark, 51 Penn. St. 96, decided in 1885, the court said: "Doubtless the legislature may withhold trial by jury from the new offenses created by statute and unknown to the common law, as in the instance of the Sunday law and numerous enactments in the nature of police regulations for the preservation of the public peace. So may trial by jury be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the *justices hundred dollar law*, and of the authorities that enforce the liability of counties for property destroyed by mobs (5 Barr. 208); and also from proceedings which, though in the common law courts are out of the course of the common law, as in motions for summary relief against judgments. . . . The proceedings in our orphans' courts, and many of those in our quarter sessions, are examples of this nature. In all these instances it is no invasion of the rights of the citizen to withhold trial by jury and provide some other mode for trying contested cases because heretofore, *i. e.*, at the common law, which antedated our Constitution, trial by jury did not exist in such cases."

Similar rulings will be found in State *vs.* Glenn. 54 Md. 572; McGear *vs.* Woodruff, 4 Vroom, 213, and State *vs.* Conlin, 27 Vermont, 218.

It will be observed that these decisions all go in the direction of assigning limits beyond which the right of trial by jury shall not go, instead of expressly indicating the extent to which it *shall* go. But the implication throughout is that the trial by jury as known and practiced when the several constitutions were adopted, which was undoubtedly everywhere the common law jury trial, is the trial guaranteed to the citizen.

And there is no reason why the same construction should not be given to the Constitution of the United States. The language of the State constitutions generally is, that the right of trial by jury *shall be inviolate*, and sometimes that it shall be *as heretofore*. That of the Federal Constitution is that "it shall be preserved." It is substantially the same in both. That only can be *preserved* which is already in existence; so that the existing system of jury trial must have been intended to be perpetuated.

The question presents itself, To what existing system of jury trial the Constitution refers?

The United States having had no existence before the Constitution was adopted, there was no common law of the United States and no judiciary history of the United States to which reference could be made for the meaning of the terms "trial by jury." But it is well known that the Constitution was framed by men familiar with the common law of England; that its language was borrowed from that source, and in many of its parts it can only be interpreted by reference to that system. The Seventh Amendment, in terms, refers to the *common law* incidents of trial by jury; and it is evident that the trial by jury, as known to the common law of England, was the institution intended to be perpetuated. This is especially apparent when we consider that the common law jury trial was in existence in all the States which adopted the Constitution. The judicial power of the Federal Government was to be exercised through the Federal courts in the States, and it was in these courts that citizens of the State were promised the continued employment of that mode of vindicating their rights of person and property to which they had been accustomed, and which they had inherited from their mother country.

What the common law jury trial was, can not be a subject of misunderstanding. It was a trial of issues of fact by a jury of twelve men in a court of common law jurisdiction and under the direction of the court, in which the jury were bound to follow the instructions of the court in matters of law, and in which the verdict of the jury might be set aside and a new trial awarded upon various grounds, such as misconduct of the jury, their failure to follow instructions of the court, or newly discovered evidence, etc.

In all actions at common law, as distinct from suits in equity, this was the form of trial by which the British subject was entitled to have his rights determined. And this right exists throughout the States in this country.

It is especially to be noted that the State of Maryland, in her Declaration of Rights, adopted in November, 1776, asserted "that the inhabitants of Maryland are entitled to the common law of England and *the trial by jury according to the course of that law.*" And this is part of the heritage of this people of this District.

In this connection, the language before cited from 20th Barbour is seen to be especially appropriate. The clause securing the trial by jury, it says, "*refers as well to all other incidents of the trial as to the number of men necessary to constitute the jury. . . . A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure.*"

A critical examination of the Seventh Amendment will compel us to the conclusion that the common law trial by jury, as I have described it, must be the one intended to be guaranteed.

There are two clauses in the amendment, so connected by the copulative, "and," that they may be read as one sentence. "The right of trial by jury shall be preserved *and* no fact tried by a jury shall be otherwise re-examined, than according to the rules of the common law." The jury of the first clause is evidently the same one to whose finding the conclusive effect is given by the second. The sense is the same as if it read "The right of trial by a jury shall be preserved, and no fact found by *such* jury shall be re-examined, etc."

The second clause, in prohibiting a re-examination of a fact found by a jury *otherwise than* according to the rules of the common law, assumes or impliedly concedes the right to

have this re-examination according to the rules of the common law.

But, as we have seen, such a proceeding is unknown to the common law except in the case of a common law jury in a court of common law jurisdiction, where the trial is conducted under direction of the court, and the jury are bound to receive instructions as to the law from the court, and their verdict is liable to be set aside by the same court. It would seem therefore to follow necessarily that such a trial by jury is the kind to which the guaranty of the first clause of the Seventh Amendment is applicable. In other words, the jury guaranteed by the Seventh Amendment is one whose finding of fact can be re-examined according to the rules of the common law.

It will be observed that several of the decisions before referred to are peculiar.

Thus in Rhines *vs.* Clark, 51 Penn. St., it was said that trial by jury may be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the justices hundred dollar law; that is to say, apparently, that the constitutional guaranty applied only to the common law courts, and did not prevent the legislature from transferring certain subjects of jurisdiction from the superior courts to inferior courts not having the common law jury.

And a similar ruling was had in Knight *vs.* Campbell, *supra.*

But our Seventh Amendment would not admit of a similar interpretation, as it describes the class of cases in which a jury trial is guaranteed. They are all suits at common law—as distinct from suits in equity—in which the matter in controversy exceeds $20. It could not be contended that Congress may withdraw such suits from the common law courts and transfer them to the justices of the peace without a jury. The pecuniary limit of their jurisdiction was enlarged, first, to cases involving $50, then to $100 and finally to $300, and there is nothing to prevent it from being carried up into the thousands.

And if this can be done without providing for trial by a common law jury, it is evident that the constitutional requirement can be completely evaded and nullified.

In the Act of March 1, 1823, by which the jurisdiction of the justices was extended to cases involving $50, Congress

recognized the constitutional obligation to secure the right of trial by jury.

But, unfortunately, the jury provided for in said act does not correspond with its common law exemplar. This act and the subsequent legislation still further extending the jurisdiction of the justice have created a very anomalous condition of things. In cases involving any amount between $50 and $300 a plaintiff has his choice of forums. He may sue in this court, in which case his demands will be passed upon by a common law jury under instructions from the court, and, for good reasons, a verdict may be set aside and a new trial ordered; in addition to which he may except to the rulings of the court and have an appeal to a higher court.

On the other hand, if he brings suit before a justice and a jury trial is demanded, his case is tried by the jury according to their own notions of the law and the fact. They are not bound to follow any instructions, and their verdict can not be set aside, and according to past rulings there is no appeal.

It is very evident that this is not the jury trial to which a party is entitled, and one who is subjected to such a proceeding against his will is entitled to relief in some form or other, either by having it arrested entirely or by having the feature of finality taken from it.

If the remedy be sought by *certiorari* the effect is to bring the proceedings before this court; but all that our court could do would be to quash the proceedings. We could not try the case here upon the merits, and, on the other hand, we could not send the case back to the justice to be tried without a jury; for that would be denying to the parties their constitutional rights. The case could not be brought here by *certiorari* on the ground of concurrent jurisdiction, as the Court of Appeals has decided. Under the acts of Congress, it was properly brought before the justice and was within his jurisdiction, and the issuing of the venire for a jury was the only excess of authority. Or, if it be held that it could not, according to the Constitution, be brought before a justice, still this court could not transfer it into this court, but could only arrest the proceedings before the justice. The effect would be to suspend the whole proceeding before the justice and compel the plaintiff to dismiss his suit there and bring his action anew in this court.

Another mode of treating the matter would be to regard the verdict of the jury as having no more effect than the finding of the justice without a jury.

This not being a verdict by a common law jury, the constitutional prohibition of a re-examination of facts found by them does not apply. They are nothing more than compulsory referees. On the demand of either party, they are to hear the case and make an award. But whether the case is heard by them or by the justice alone, the judgment is to be given by him.

Under the Act of March 1, 1823, where the debt or demand exceeds $5, and either party shall think himself aggrieved *by the judgment of the justice*, he shall be at liberty to appeal. It is not the verdict of the jury that constitutes a grievance, because this would be harmless without the judgment entered upon it. With or without a jury, it is the judgment given by the justice by which the unsuccessful litigant is aggrieved.

So that in either case, the right of appeal would seem, by the letter of the law, to be given, and it is only what seems to me to be the mistaken idea that has heretofore prevailed in regard to the character of the justice's jury and the conclusiveness of their findings which has prevented the right of appeal from being recognized.

In the first case in the old Circuit Court, in which the question of appeal from a justice, after a verdict of a jury arose in 1824, viz., Sherburne *vs.* Semmes and wife (2 Cr. C. C. 446), the court simply doubted.

In the second case, Davidson *vs.* Burr, Id. 515, decided in 1824, the court denied the appeal, on the ground that the facts tried by a jury could not be re-examined, under the second clause of the Seventh Amendment. Mr. Morsell, Justice, dissented.

In the third case, Maddox *vs.* Stewart, Id. 523, also decided in 1824, the appeal was dismissed on the same ground, Morsell, J., again dissenting.

In the fourth case, Denny *vs.* Queen, decided in 1827, 3 Cr. C. C. 217, the appeal was dismissed on the same ground.

In the fifth case, Smith *vs.* Chase, the decision overruled a motion to require the justice to sign a bill of exceptions. No reasons were given by the whole court, but Judge Cranch took the same ground as in the other cases.

In the second and third cases Judge Morsell dissented, so that the court were not unanimous.

It will be seen that the Circuit Court were dominated by the idea that the justice's jury was the jury guaranteed by the Constitution. It was simply assumed, no question having been made as to it, either by counsel or the court. If this be an error, as we think is shown by the foregoing considerations, the whole foundation of the objection to an appeal from the justice's judgment on the verdict of a jury is taken away.

In my opinion, the Act of 1823 may fairly be construed to give an appeal in all cases, whether the issue be tried by the justice or a jury. And in this view Justice Bradley concurs in a recent opinion—U. S. *ex rel.* Brightwood Rwy. Co. *vs.* O'Neal, 24 Wash. Law Rep. 406.

It seems to me, on the whole, that the preferable form of relief in these cases, as a general rule, is to recognize the right of appeal, and, if the justice should refuse to allow an appeal after verdict, to issue a *mandamus* requiring him to do so.

When it is once understood that the verdict of a justice's jury is not conclusive, the motive for demanding a jury trial will be wanting, but whether it be had or not, the party aggrieved can have his jury trial in this court, on appeal, and the inconvenience resulting from the views formerly held on this subject will be avoided.

In this particular case, however, if I should quash the writ of *certiorari*, leaving the case to be proceeded with by the justice, and leaving to the defendant the remedy of appeal, in case of adverse verdict and judgment, nothing would be settled except the abstract question of the right of appeal, and that only as far as my individual opinion can settle it; whereas, if the jury process of the justice be quashed, a judgment will be rendered which can be immediately taken to the Court of Appeals, and it is of the highest importance that the question involved in this case be decided there as speedily as possible.

If it is desired to take the case at once to the Court of Appeals, therefore, I will pass an order quashing all the proceedings before the justice subsequent to the joining of issue.

JACOB H. KENGLA
vs.
ROLAND C. BOOTH. } At Law. No. 40,356.

HEARING on motion to quash writ of *certiorari*, to remove proceedings from before a justice of the peace into this court. *Motion overruled, and proceedings before justice quashed.* Decided November 3, 1896.

Mr. Justice BRADLEY delivered the opinion of the Court:

The petitioner was defendant in an action brought against him before Lewis I. O'Neal, one of the justices of the peace for the District of Columbia, by Roland C. Booth, in which the plaintiff recovered judgment for one hundred dollars on the 20th day of August, 1896. The defendant did not appeal, but filed his petition on the 6th day of October, 1896, and obtained a writ of *certiorari*, directed to said justice of the peace, who has made due return thereto.

The ground of the application for the writ is that the justice was without jurisdiction to try the action because the petitioner, under the laws in force in the District of Columbia, was unable to obtain a trial by jury according to the course of the common law, a right which he claims was guaranteed by the Constitution of the United States, the amount in controversy exceeding the sum of twenty dollars.

The plaintiff has moved to quash the writ, and to remand the case to the justice of the peace.

At the hearing, several grounds were presented in support of the motion, one of which only will be considered, that being the principal question, and decisive of the controversy. It is the constitutional question raised by the petition.

Article 7 of the Amendments to the Constitution reads, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

In U. S. *ex rel.* Brightwood Railway Co. *vs.* O'Neal, 24 Wash. Law Rep. 406, the opinion was expressed by this court that the re-examination of a fact tried by a jury, otherwise than according to the rules of the common law, is prohibited by this amendment only in cases where the trial of the fact

by jury had been according to the course of the common law; such trial by jury as is afforded by law in the court of a that justice of the peace is not according to the course of the common law; and that the right of appeal given by Act of Congress of March 1, 1823, in all cases where the debt or demand exceeded the sum of five dollars existed in case of a judgment entered up by the justice upon the verdict of a jury. In that proceeding the right of appeal under the statute was the only question.

In the case at bar the broad proposition is made that, under the statutes regulating the jurisdiction and proceedings of justices of the peace, a trial by jury according to the course of the common law can not be had, and, therefore, the legislature conferring jurisdiction upon such officers to try "suits at common law" which involve rights exceeding twenty dollars in value is unconstitutional.

If this conclusion is reached, it necessarily follows that the motion to quash this writ of *certiorari* should be overruled, and that the entire proceedings before the justice in the case certified into this court should be quashed.

The question presented is a serious one, inasmuch as, if the contention of the defendant is sustained ultimately, these officers will be deprived of jurisdiction in suits "where the value in controversy exceeds twenty dollars." In view of such possible consequences, I have given the subject the most careful consideration.

My opinion that the trial by jury to be had before a justice of the peace of this District is not according to the course of the common law having been announced in U. S. *ex rel.* Brightwood R. Co. *vs.* O'Neal, the inquiry now is, whether by the words "trial by jury" used in this Seventh Amendment, trial by jury *according to the course of the common law* was intended, and, if so, whether the right of appeal to this court conferred conditionally by the statute, and the incidental right of common law jury trial here upon such appeal preserves such constitutional right.

I will first consider the latter question. The Act of 1823 provides that, upon such appeal, either of the parties may demand a trial by jury. The right is "preserved" to the appellant, who takes and perfects his appeal. But what are the essentials to the exercise of the right of appeal, and of what avail is the right of appeal to one who is unable to comply with its statutory requirements?

The right of appeal is given in all cases when the demand exceeds $5. By the Act of 1823 either party aggrieved might appeal to the next circuit court, and, upon petition of the appellant that court was empowered and directed to hear and determine the matter in a summary way. No appeal bond or undertaking was required; the right was unconditioned. The Act of February 22, 1867, regulated appeals by providing that *no appeal should be allowed* unless the appellant, with sufficient surety approved by the justice, entered into an undertaking to satisfy and pay all intervening damages and costs arising on the appeal. It also required the appellant to make the deposit for costs with the clerk of this court, exacted at the commencement of every suit in this court by the Act of June 27, 1864, *or* to obtain leave to prosecute his appeal *in forma pauperis*. The Act of February 19, 1895, largely increased the jurisdiction of the justices of the peace, and at the same time added to the burdens of the appellant by requiring of him an undertaking with sufficient surety approved by the justice, conditioned to satisfy and pay whatever final judgment might be recovered in the appellate court.

If the unrestricted right of appeal conferred by the Act of 1823 could be reasonably construed to *preserve* the right of trial by jury, it would seem that the burdens imposed upon the appellant by the Act of 1867, and more emphatically those imposed by the Act of 1895, so hamper the right as to deprive it of its constitutional prerogative of free existence. The party injuriously affected by the judgment may be so situated as to property, money, credit, or friends, as to be incapable of compliance with the statutory requirements abridging his right of appeal, and his appeal being denied, so far as a trial in this court might give it, he is deprived of a common law jury trial.

It might be well claimed that if the right of appeal were unrestricted, free to persons aggrieved, without any requirement of appeal bond or deposit of costs; that inasmuch as the appellant must move at some personal inconvenience or expense to obtain a common law jury trial, of which he was deprived in the first instance, his constitutional right has been impaired. With the existing statutory exactions of undertaking on appeal to satisfy and pay the judgment of the appellate court, the deposit of costs with the clerk, or the prosecution of the appeal by leave of court *in forma*

pauperis, it is my opinion that the privilege of jury trial in this court does not preserve the right. Greene *vs.* Briggs, 1 Curtis, 311; *In re* Dana, 7 Benedict, 14; Callan *vs.* Wilson, 127 U. S. 540.

Do the words in the Amendment "*trial* by jury" mean trial by jury according to the course of the common law?

In The Capital Traction Co. *vs.* Hof, 24 Wash. Law Rep. 646, this question was considered by Justice Cox and by him answered in the affirmative. My examination of it has been greatly assisted by his able opinion, and I am compelled to the same conclusion.

At the time of the adoption of this amendment the expression "trial by jury" "in suits at common law" had a well settled meaning in the States. It was understood as a judicial proceeding in which issues of facts are determined by a jury under the guidance of a court that regulates the procedure and determines questions of law. The opposers of the Constitution had based their opposition in part upon the absence of a provision guarantying a jury trial in civil cases. Such guaranty had been given in the "trial of all crimes," but its absence was insisted as in effect a denial of the right in civil cases.

The Judiciary Act, September 24, 1789, protected this right in the courts of the United States by providing that "the trial of issues in fact in the District courts in all causes except civil causes of admiralty and maritime jurisdiction shall be by jury;" also, "the trial of issues in fact in the circuit courts shall in all suits, except those of equity and admiralty jurisdiction, be by jury." This amendment to the Constitution was proposed to the legislatures of the several States by the First Congress on the 25th day of September, 1789. It fixed the right, then protected only by legislation, by the more permanent guaranty of the Constitution.

The amendment had no relation to suits or actions in State courts, the citizens of the States being protected in their rights by State legislation, State constitutions, and bills or declarations of rights. It affected only proceedings in United States courts. It however applied to the Territories (Webster *vs.* Reid, 11 How. 437); and it applies to the District of Columbia. Callon *vs.* Wilson, *supra*.

In the State of Maryland an Act of Assembly was passed December 29, 1791, which conferred jurisdiction upon jus-

tices of the peace in cases where the amount claimed did not exceed ten pounds current money or 1,000 pounds of tobacco. This act remained in force in the present District of Columbia until the Act of Congress of February 27, 1801, which continued in force the laws of the State of Maryland as they then existed. It provided for a circuit court and its jurisdiction, and with respect all cases where the personal demand, exclusive of costs, did not exceed the value of twenty dollars, gave cognizance to justices of the peace, which sum they should not exceed, any law to the contrary notwithstanding.

The Act of Congress of March 1, 1823, increased their jurisdiction to fifty dollars, and in every action where the sum demanded exceeded twenty dollars, authorized either party to demand "that such action be tried by a jury," and upon such demand required the justice to issue a *venire*, causing twelve jurors to be summoned, who should sit together, hear the proofs and allegations of the parties, and when their verdict should be returned to the justice he was "required to give judgment forthwith thereon." However ineffectual this legislation may have been to secure a trial by jury according to the course of common law in the cases intended to be affected, it clearly indicates that Congress had in view this Seventh Amendment. That such a jury trial was not regarded by the legislators as according to the course of the common law, would seem to be indicated by the provision in the Act of 1823, that, upon an appeal, which is expressly given in all cases when the debt or demand exceeds five dollars, either party might demand a trial by jury. What was intended to be guaranteed by this amendment must have been as full and as large in the matter of jury trial as the right conferred upon the Northwest Territory by the ordinance of 1787. The second article of that ordinance reads: "The inhabitants of that Territory shall always be entitled to the benefits of the writs of *habeas corpus*, and of the trial by jury . . . and of judicial proceedings according to the course of the common law."

In Green *vs.* Briggs, *supra*, Curtis, J., commenting upon the constitution of Rhode Island, and the provision that "the right of trial by jury shall remain inviolate" says, "in civil causes a trial by jury is to be had in those classes of cases in which it had been practiced down to the time when the constitution was formed; and such trial is to be sub-

stantially in accordance with such modes of proceeding as had then existed."

He was dealing with a criminal case, and further remarked, "The accused has an absolute right to a trial by jury. He has also a right to be so charged that when that *trial* takes place, the jury shall pass upon the whole charge so far as it involves matter of fact, and *under the direction of the court* shall apply the law to all mixed questions of law and fact."

In Mitchell *vs.* Harmony, 13 How. 115, at p. 143, Chief Justice Taney says: "With regard to the legitimate and proper mode of operation and effect of the trial by jury, the language of Lord Coke should ever be kept in mind, as furnishing the true and only true standard by which to measure this valuable institution. After giving his derivation of the terms verdict and judgment, this great common lawyer proceeds, '*et sicut ad quæstionem juris non respondent sed judices; sic ad quæstionem facti, non respondent judices sed juratores.*' For jurors are to try the fact, and the judges ought to judge according to the law that ariseth upon the fact, for *ex facto jus oriture.* . . . Now, suppose the jury sworn in a cause should declare to the court what evidence was competent or relevant to the issues they were to try, and what, in their view, should be the law governing the contest between the parties. Would not such a proceeding be regarded as extremely irregular and wholly unjustifiable? And why would it be so regarded? Simply because in so acting the jury would transcend the province assigned them by their duty; because they would not be conforming to the maxim *ad quæstionem legis non respondent juratores sed judices.* . . .

"In accordance with the maxim quoted from Lord Coke, may be cited other authorities of great weight. Thus, in the case of Rex *vs.* Poole, to be found in cases in the King's Bench, in the time of Lord Hardwicke, it is said by Hardwicke, C. J., that 'it is of the greatest consequence to the law of England, and to the subject, that the powers of the judge and the jury be kept distinct; that the judge determine the law, and the jury the fact; and if ever they come to be confounded, it will prove the confusion and destruction of the law of England.' So likewise in Foster, p. 256, it is said that 'the construction of the law, upon the facts

found by the jury, is in all cases undoubtedly the proper province of the court.'"

Being of the opinion that the Seventh Amendment secures to litigants in suits at common law in the District of Columbia, where the value in controversy exceeds twenty dollars, a trial by jury in the first instance, according to the course of the common law, that under the statutes regulating the jurisdiction, powers and procedure of such officers, such a jury trial could not be had before the justice of the peace before whom this case was tried, inasmuch as the judge exercises no functions in such a trial save to cause a jury to be summoned, to keep them together, to receive their verdict and to enter up judgment thereon, and the jury determine the competency and relevancy of evidence, and what in *their* view should be the law governing the contest between the parties, it follows that the motion to quash the writ of *certiorari* must be overruled, and that the proceedings certified into this court, being in violation of the Constitution of the United States, must be quashed.

It is so ordered.

APPENDIX II.

Documents Found in the Files of the House of Representatives of the United States.

H. R. No. 39.

A BILL

To extend the jurisdiction of Justices of the Peace in the recovery of debts in the District of Columbia.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of June next, in all cases, where the real debt and damages do not exceed the sum of fifty dollars, exclusive of costs, it shall and may be lawful for any one Justice of the Peace of each respective County within the District of Columbia wherein the Debtor doth reside, to try, hear and determine, the matter in controversy, between the creditor and debtor, their executors and administrators, and upon full hearing of the allegations and evidences of both parties to give judgement according to the laws existing in the said District of Columbia, and the equity and right of the matter, in the same manner, and under the same rules and regulations, to all intents and purposes, as such Justices of the peace are now authorized and empowered to do when the debt and damages do not exceed the sum of twenty dollars, exclusive of costs, Provided, nevertheless, that all Justices of the Peace of the said County shall be compelled upon entering judgement upon cases within their jurisdiction to enter the same in such manner as shall carry an interest thereon from the date thereof until the same shall be paid or satisfied.

2. And be it further enacted, That, in all cases where judgements shall be rendered by a Justice of the peace, it shall be lawful for the defendant to supersede the said judgement at any time within sixty days from the rendition of the same, which supersedeas shall stay execution for six months thereafter, and shall be taken by the Justice who rendered the judgement and no other, Provided such Justice is living in the County, in which said Judgement was rendered, and acting in his judicial capacity: but if such Jus-

tice shall not be so acting, then and in that case before any other Justice of the peace for the aforesaid County who may be legally acting in that capacity.

3. And be it further enacted, That the Justices of the peace within the District of Columbia, be, and they are hereby directed and it is hereby made their duty to keep a docket, and therein to record and make regular entries of their proceedings in all cases in which they shall act in virtue of their office, and they are hereby directed to furnish the plaintiffs and defendants respectively with a copy of any judgement by them rendered when required, on which copy any other Justice of the peace of the County is hereby authorized to issue execution or fieri facias in the same manner as executions are now issued by the Clerk of the Circuit Court of the District of Columbia.

4. And be it further enacted, That, if any Justice of the peace shall omit to keep a docket as aforesaid or be guilty of any other negligence or omission, by which the plaintiff (having obtained a judgment before such justice) shall lose his (or her) debt, that then and in that case the said justice shall pay and satisfy to the said plaintiff the debt interest and costs lost as aforesaid, to be recovered by plaint before any other justice of the peace who shall on proof of the fact render judgement against such defaulting Justice, together with any interest that may have accrued on the debt.

5. And be it further enacted, That, each and every Justice of the peace shall, and it is hereby made his duty, upon his resignation or removal from office, and it is also made the duty of his Executors or administrators upon the death of any such justice of the peace, forthwith to deliver to the Clerk of the Circuit Court of the District of Columbia within the County in which said Justice of the peace officiated such docket or dockets, as said Justice of the peace, so resigning, removing or dying, shall or may have had; and it shall be the duty of the Clerk, in whose possession said docket or dockets may be placed, to furnish copies of all such entries made in said docket or dockets, to persons applying therefor, and who may be entitled thereto, in the same manner, and to have the same effect, as if said copies had been furnished by the Justice so resigning, removing or dying as the case may be; and in case of the death, resignation, removal from office, or other incapacity of any person who may have acted as a Justice of the peace as

aforesaid and neglect, (on the part of himself or Executors or administrators, as the case may be) to transfer such docket or dockets, he or they shall forfeit to the United States the sum of five hundred dollars to be recovered as other penalties due to the United States.

6. And be it further enacted, That, the Judges of the Circuit Court of the District of Columbia shall not hold original plea in the said Court, of any debt or damage in cases within the jurisdiction given to Justices of the peace by this act, which shall not exceed fifty dollars exclusive of costs, any law to the contrary notwithstanding: Provided nevertheless, That nothing in this act contained shall extend, or be construed to extend, to divest the Circuit Court of the District of Columbia from the power of holding plea of any debt or damages where the same doth not exceed the sum of fifty dollars, or may be above the sum of twenty dollars, where the writ or original process issued for the recovery of the same shall have been impetrated at any time before the first day of June next.

7. (And be it further enacted, That, if either the plaintiff or defendant shall think him or herself aggrieved by the judgement of any Justice of the peace, he or she shall have the right of appeal as heretofore allowed by the act of Maryland of November 7th 1791, to the next Circuit Court according to the mode therein prescribed, except that instead of twenty shillings, the sum on which the right of appeal shall be granted shall not be less than five dollars, Provided that no appeal from the judgement of any justice of the peace to the Circuit Court of the District of Columbia, shall be dismissed because the same had not been prayed to the Circuit Court next after the rendition of such judgement, unless the Court shall be satisfied that the defendant had notice of such judgement at least ten days before the sitting of said Circuit Court.)

NOTE. The foregoing was stricken out and the following amendment inserted in lieu thereof by action of the Committee and the House:

Sec. 7. And be it further enacted That in all cases where the debt or demand doth exceed the sum of five dollars, and either plaintiff or defendant shall think him or herself aggrieved by the Judgement of any justice of the peace, he or she shall be at liberty to appeal to the next circuit Court to

be held in the county in which the said judgement shall have been rendered, before the Judges thereof who are hereby upon the petition of the appellant, in a summary way, empowered and directed to hear the allegations and proofs of both parties, and determine upon the same according to law, and the equity and right of the matter at the same term in which the said petition shall be exhibited, without further continuance or delay, unless it shall appear to the said Court, that further time ought to be given to the party applying for the same, and either of the said parties may demand a trial by Jury, or leave the cause to be determined by the Court, at their election, and in any case of appeal from the decision of a justice of the peace, the Circuit Court, where two summonses against the appellee shall be returned non est, or one attachment returned non est, and the said appellee shall not appear, the Court may proceed to hear and determine such case in the same manner as if the appellee had regularly appeared.

8. And be it further enacted, That, from and after the first day of June next no Justice of the peace within the District of Columbia before whom any judgement hath been rendered, or any supersedeas on any judgement rendered, by a justice of the peace hath been taken, shall make return of any such judgement or supersedeas to the Office of the Clerk of the Circuit Court of the District of Columbia for the purpose that the same should be recorded or filed therein by the Clerks of the said Circuit Court, any law to the contrary notwithstanding.

9. And be it further enacted, That, any Justice of the peace before whom supersedeas may be taken, or any other Justice of the peace of said County, may and shall at the request of the plaintiff, or any other person authorized by or on behalf of the said plaintiff, issue execution by way of capias ad satisfaciendum, or fieri facias against the principal debtor and his securities, or against either of them, after the expiration of the time so mentioned in the said supercedeas.

10. And be it further enacted, That, the Constables of the said District who have been or may hereafter be, duly appointed and qualified according to law, are hereby authorized and empowered to serve and levy executions issued by a Justice of the peace on judgements obtained for small debts out of Court, in the same manner and by the same process

as the Marshal of the District of Columbia or his deputies are authorized to do, and that a commission of five per cent. be allowed the constable for every sum thereon by him levied: Provided that the said Constables shall, before they proceed to the discharge of the duties required by this act, give bond to the United States with good and sufficient security, in the penalty of two thousand dollars to be approved of by any one of the Judges of the Circuit Court of said District for the due performance of the duties of a Constable, and, also, for the duties and trusts reposed in them by virtue of this act; and it shall be the duty of such Judge forthwith to have the same filed or entered on record, by the Clerk of the County in which said Constable may reside at the cost and expense of said Constable: and the said Constables shall, after this act goes into effect, make all returns, now made to the Clerk of the Circuit or County Court, to the Justices of the peace, at such times, in such manner and under such penalties as are at present established by law in rendering the same to the said Clerk: Provided that no return, judgement or execution shall be received or recorded as satisfied by the said Justices of the peace without the receipt of the plaintiff annexed to the same: Provided also that nothing in this act contained shall be construed to prohibit or prevent the Marshal or his Deputies in the respective Counties in the District of Columbia from executing or levying executions issued by a Justice of the peace for small debts out of Court, when the same are put into their hands for that purpose, in the same manner as by law they have been or now are authorized to do, but, for executing or levying such executions the said Marshal or his deputies shall be entitled to the same Commission, and nothing more, as is herein allowed to Constables in such cases.

11. And be if further enacted, That where any judgement before any Justice of the peace shall have continued for more than one year, and the said judgement had not been paid or satisfied, it shall and may be lawful for the justice, before whom the said judgement had been obtained, or any other Justice of the peace for said County to revive the same by scire facias, which shall be made returnable on a certain day, not exceeding forty days from the time of issuing the same, to the said justice or any other justice of the peace of said County; and any Constable qualified as above

mentioned, of the said County is hereby authorized and required to serve such writ of scire facias, and make due return thereof on the return day mentioned in the said writ, in the same manner, and entitled to the same fee and liable to the same penalty as in the case of a warrant issued by a Justice of the peace as directed by law in such case made and provided.

12. And be it further enacted, That it may be lawful for any Constable qualified as aforesaid to deliver, at the County Jail, to the Marshal of the said County, any person committed by a Justice of the peace on a capias ad satisfaciendum, when the case may or doth so require; and that the said Marshal or his gaoler, is hereby required and directed to take charge of such person, and the same in his custody safe keep until such person or persons shall be duly discharged therefrom according to law.

13. And be it further enacted, That the Justices of the peace be, and they are hereby authorized and empowered to issue capias ad satisfaciendum, or fieri facias, in all cases where the said Justices are empowered to render judgement by virtue of this act, or the laws already in existence in the District of Columbia.

(14. And be it further enacted that it shall and may be lawful for the several Justices of the peace within the District of Columbia to ask and receive the same fees as are allowed for similar services to Justices of the peace in the City of Baltimore in the State of Maryland by an act of the General Assembly of that State passed February the nineteenth in the year Eighteen hundred and nineteen.)

NOTE. The foregoing was stricken out and the following amendment inserted in lieu thereof by action of the Committee and the House:

Sec. 14. And be it further enacted that it shall and may be lawful for the several Justices of the peace within the District of Columbia to ask and receive for the performance of their duties under this act such fees as are allowed to said Justices for similar services by the laws at present in force in the said District.

Sec. 15. And be it further enacted, That in every action to be brought by virtue of this act, where the sum demanded shall exceed twenty dolls. it shall be lawful for either of the parties to the suit after issue joined and before the Justice shall proceed to inquire into the merits of the cause, to

demand of the said Justice that s[uch] action be tried by a jury—and upon said demand th[e] said Justice is hereby required to issue a venire under h[is hand] and seal, directed to any Constable of the County wh[ere] said cause is to be tried commanding him to summo[n twelve] jurors to be and appear before the Justice issuing s[uch] venire at such time and place as shall be therein expre[ssed], and the Jurors thus summoned shall possess the qualifi[cations] and be subject to the exceptions now existing by [law] in the District of Columbia.

Sec. 16. And be it further enacte[d that if any of the persons so summoned and returned a[s Jurors] or be challenged and set aside, the [Justice] said cause is to be tried, shall dire[ct the constable to summon and return forthwith a tales, [such] subject to the same exceptions as t[he Jurors aforesaid, so as to make up the number of twelve [after all causes of challenge are disposed of by the Justi[ce, and the said twelve persons shall be the Jury who sh[all try the cause, each of whom shall be sworn by the Justi[ce well and truly to try the matter in difference between [the parties, and a true verdict to give according to evid[ence, and the said Jury being sworn shall set together a[nd hear the proofs and allegations of the parties in public[, and when the same is gone through with, the Justice sha[ll administer to the constable the following oath, viz:

"You do swear, that you will [keep this jury together in some private room without mea[t or drink, except water; that you will not suffer any pers[on to speak to them nor will you speak to them yourself, [unless by order of the Justice, until they have agreed on [their verdict."

And when the jurors have agre[ed on their verdict they shall deliver the same publicly to t[he Justice, who is hereby required to give judgement forth[with thereon and the said Justice is hereby authorized to issue [execution on said judgement, in the manner and under the [limitations hereinbefore directed.

SEC. 17. And be if further enac[ted, That in addition to the fees herein before provided, for [trials before Justices, there shall be allowed to the Ju[stice for issuing a venire facias 25 cts & for swearing the [jury 12½ cents—to the jurors sworn to try 12½ cents ea[ch & to the constable for summoning the jury 37½ cents.

A Bill to produce an uniform mode for the Collection of small Debts, and for other purposes in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled that so much of the 11th Section of an Act entitled "An Act concerning the District of Columbia" passed on the 2nd day of March 1801 as limits the Jurisdiction of the Justices of the Peace to Twenty Dollars exclusive of costs; and as directs them to receive for their services, the same fees, which were allowed in the State of Maryland, for the like services. And that so much of an act entitled "An Act additional to and amendatory of an act entitled "An Act, concerning the District of Columbia" passed on the 3rd day of May 1802, as relates to executions issuing from the Clerk's Office, be, and the same, from and after the 1st day of April next, are hereby repealed.

SEC. 2. And be it further enacted, that from and after the said first day of April next, the Justices of the peace in said District, shall have the exclusive power of issuing executions on judgements rendered by them respectively; which executions when issued shall be made returnable to the justice issuing the same, at any time not exceeding Thirty days from the date thereof.

SEC. 3. And be ti further enacted, that no execution shall issue on any judgement of a single majistrate, on the Body or Effects of any person or persons, provided that such person or persons go before any Justice of the Peace of the County, within forty days from the rendition thereof, together with one or more sureties, as the Justice may approve of, confess judgment for the Debt and costs; with stay of Execution; which confession and surety, shall be a sufficient supersedeas for Six months from the date of said confession, for all sums over ten Dollars; and Three months for all sums of, and under Ten Dollars. Provided nevertheless, that Executions may be issued on any Judgment of a single Majistrate in said District at any time within forty days from the rendition of such judgment, provided such judgment shall not have been superseded. And it shall be the duty of the Justice who takes such superdeas, to reckon legal Interest on the amount of the debt until the same shall become due, which Interest added to the principal and costs shall be included in the supersedeas Bond.

SEC. 4. And be it further enacted, that from and after the said first day of April next, the Justices of the Peace in said District, shall have cognizance in personal Demands to the value of Forty Dollars, exclusive of costs.

SEC. 5. And be it further enacted, that the Justices of the Peace for the Counties of Washington and Alexandria, from said and after the first day of April next, shall enter on a Docket or Record, to be kept by them, for that purpose; all warrants and summons's by them issued, as well as their Judgments and Costs distinctly stated, and also their Executions. And it shall also be their Duty to file all such original warrants, summons's and Executions so returned in their office, for the inspection of those concerned.

SEC. 6. And be it further enacted, that in case of the Death, resignation or disqualification of any Justice of the Peace in said District, any other Justice of the Peace within the same County and District, may receive the Docket or Record kept by such Justice so resigned, deceased or disqualified and proceed to act on any unfinished business in the same manner, as if the business had been commenced by himself.

SEC. 7. And be it further enacted, that from and after the said first day of April next, all warrants for debt, under the jurisdiction of a single Majistrate, shall be drawn in the nature of a summons, that is, for the defendant be-summoned to appear at some particular time and place, before some Justice of the Peace, in the same County to answer unto the plaintiff in a suit, then and there Pending; and in case the defendant shall not attend, agreeably to a summons on him, or her, or them legally served, either in Person, or by Attorney, or render any reasonable excuse for his or her non attendance; the Justice may, after a sufficient lapse of time, discretionary with himself, proceed to give judgment in favor of the Plaintiff by default of the Defendant.

SEC. 8. And be it further enacted, that the following fees shall be allowed to the Justices of the Peace in said District, from and after the said first day of April next, for the following services, that is to say

For Issuing a Summons for Debt.....	$ .12½
" Every subpoena for one or more witnesses	.12½
" Venire to summons Freeholders.....	.25
" Capias ad satisfaciendum and filing the same...	.25

For	Issuing a Fieri Facias and filing the same.....	.25
"	" Sciere Facias and filing the same.....	.25
"	Every Supersedeas Bond 12½.....	.25
"	Every Oath or Affidavit	.06¼
"	Probating account 6¼.....	.12½
"	Every Judgment rendered and recording the same 12½	.25
"	Every Commitment.....	.25
"	" Releasement..	.25
"	" Warrant of Attachment.....	.25
"	" Venire, to Summons a Jury for forcible entry and detainder.....	.75
"	Taking an Inquisition and making return thereof.....	4.00
"	Warrant of Resolution.....	.75
"	Taking an acknowledgement of a Deed.....	.25
"	Taking any other acknowledgement.....	.12½
"	Taking an Appeal Bond.....	.25
"	Taking a Bail Peace to the Circuit Court.....	.25
"	A Pass.....	.25
"	Certificate of Estrays.....	.37½
"	Receiving complaint, and issuing a warrant in all criminal cases.....	.25
"	Recognizance to keep the peace, or appearance at Court.....	.25
"	Taking Depositions, authorized by any Court the sum of $2 per Day.....	2.00

SEC. 9. And be it further enacted, that from and after the first Monday of April next, there shall be a board of Majistrates in the County of Washington in said District, consisting of all the Justices of the Peace of said County any seven of whom shall be sufficient to constitute a quorum, who shall annually thereafter meet on the first Monday of April, and appoint as many Constables, for the said County as they may deem necessary, to serve for one Year, and untill a new appointment shall have been made.–

SEC. 10. And be it further enacted, that the Levy Court in the County of Alexandria in said District; from and after the said first Monday of April, shall annually thereafter, on the first Monday of April, appoint as many Constables in said County as aforesaid, as they may think necessary, to serve for one year, and untill a new appointment shall have been made as aforesaid.

SEC. 11. And be it further enacted, that the Constables thus appointed in the Counties of Washington and Alexandria, shall have all the powers, and execute all the duties, heretofore enjoined on the Constables, which were appointed by the Circuit Court of the District of Columbia, and shall before they enter on the duties of said office, take the usual oath before the Mayor, or some other Justice of the Peace for said Counties, for the faithful discharge of the several duties incident to said office; and shall also find one or more sureties, as shall be approved of by any two Justices of the Peace for their said Counties, in the sum of Five Hundred Dollars for the faithful discharge of the duties of said Office, and also for the punctual payment of all monies, for Debts and Costs, Distress for Rent, Collections of Fines; Private Debts, or in any other manner that shall come into their hands by virtue of their office, and that they shall make return of all warrants, summons' and executions directed to them, and in no case to exceed Forty Days for all Warrants and Summons's and not to exceed 30 days on all executions from their dates respectively. All Executions must be returned to the Justice of the Peace who shall have issued the same. It shall be the duty of the Constable who makes such returns, to endorse thereon the time of service.

SEC. 12. And be it further enacted, That the Constables of said District, shall, from and after the first day of April next, shall receive the following fees for the following services—that is to say:

For serving a Summons on Defendant for Debt.....	$0.33⅓
" A Summons on Witnesses each.....	.17
" Return and service of a CaSa or Fifa.....	00.50
and that a Commission of 8 pr cent be allowed the) Constable, for every sum thereon by him levied.....)	
Serving a Warrant for assault and Battery warrant) for theft, search warrant, or any other warrant of) a criminal nature .....)	.50
Carrying any person to prison, who shall have been) arrested for breaches of the Peace, or any other) misdemeanor, and who shall have neglected or re-) fused to give security	.50

SEC. 13. And be it further enacted, that the Costs for issuing and serving warrants in cases of assault and battery,

warrants for theft, search warrants, and all other warrants of a Criminal nature, shall in the first instance, be paid by, or made liable to, the Complainant, and if the party against whom a warrant shall have been issued, shall, on trial, be found guilty of the charges preferred against him, or her, the person thus found guilty, shall be liable to the costs which may have accrued; and on neglect or refusal to pay the same, may be committed to close confinement, until his or her compliance. Provided, nevertheless, that in all cases when any person shall be essentially injured by another, either by assault and Battery, theft, or any other way, of a Criminal nature, on complaint being made to any Justice of the Peace within the County, and the said Justice having good reason to believe, that the complainants charges are well founded, it shall be the duty of said Justice to issue his warrant to arrest the Criminal, notwithstanding he may not receive from the Complainant, any compensation Therefor,

SEC. 14. And be it further enacted, that in all cases where the Debt, or demand exceeds Five Dollars, and either Plaintiff or Defendant, shall think him or herself aggrieved by the judgment of a single Majistrate, he or she, shall be at liberty to appeal to the next Circuit Court, before the Judges thereof, who are upon the petition of the appellant, in a Summary way, empowered and directed to hear the allegations and proofs of both parties and determine on the same according to Law and the equity and right of the matter. The same Court in which the said petition shall be exhibited shall determine on the same without any further continuance or delay, unless it appears to the satisfaction of said Court, that further time ought to be given to the party applying for the same, to enable the Court to determine the cause according to Law and the equity and right of the matter, no Execution rendered upon any judgment of any Justice of the Peace shall be stayed or delayed, or any supersedeas on such judgment, granted, upon any appeal, unless the person or persons appealing, or some other person on his or her behalf shall immediately on making such appeal enter into Bonds with sufficient surety, such as the Justice, by whom the Judgment shall have been given, shall approve of, in double the sum recovered.

SEC. 15. And be it further enacted, that any act, or parts of acts of Congress which comes within the purview of any of the provisions of this act, be, and the same after the first day of April next are hereby Repealed.

The foregoing Bill has been agreed upon at a general meeting of the Justices of the peace for the Counties of Washington and Alexandria, convened agreeable to Public notice on the 7th day of February 1814.

James M. Varnum
Secretary.

Abraham Faw
Chairman.

Alexandria 23,Feby. 1814.

Dr. Sir

I communicated to the Justices here the purport of the bill handed you with the Petition of certain other Magistrates, Praying Congress to amend the Laws of the District, relating to the collection of small Debts, that part of the bill which Increases their Jurisdiction to Forty dollars, was the part most dreaded here—but on Examining the Constitution of the United States, the 7th Section of the Amendments, the case is provided against It declares that in all suits at common Law where the value in controversy shall exceed $20, the right of trial by Jury shall be preserved &c. It is supposed this must have Escaped the Petitioners when they handed you the Bill and as that appears to be the foundation of the other sections they will probably withdraw it, should they not do so the Justices of this County will express to Congress their belief that no change is wanted by the people of Alexandria County. there are Eighteen Gentlemen in the Commission of the Peace here only five of whom have signed the Petition before you.

I am wth Great Resp^{t}
Yr. Very Hbl. Serv.
L Deneale.

MEMORIAL

of Sundry Justices of the Peace & inhabitants of the district of Columbia against any alteration in the laws for the collection of debts.

To the Hon^{ble}. Senate and House of Representatives of the United States of America.

The memorial of the undersigned Justices of the Peace and other Inhabitants of the county of Alexandria in the District of Columbia, respectfully represents,

That your memorialists have heard, with concern, that a petition from some of the Justices of said county has been lately presented to Congress alleging divers defects and inconveniences in the existing laws; and also that a Bill founded thereupon has been offered, which grants to the Justices an extension of jurisdiction, and an augumentation of fees. Your memorialists conceive that the contemplated extension of the jurisdiction of single magistrates, to sums not exceeding forty Dollars, is subversive of the inestimable privilege of the trial by Jury; repugnant to the 7th Article of the amendments to the Constitution of the U.States; and hostile to the spirit of the 11th Article of the Bill of Rights of Virginia, which, unless repealed by Congress, is still the law of this portion of the District of Columbia.

Your memorialists are of opinion that an increase of the fees of Magistrates is, at this time, unnecessary; that the power, granted by S Bill, of committing the debtor to close confinement, by warrant of a magistrate is contrary to the established usages of the land, & that the privilege of appealing to the Circuit Court in all cases, where the debt exceeds five Dollars, will be productive of litigation, and may be converted into an engine, oppressive and ruinous to the Poor.

Several other provisions of this Bill they are apprehensive, would eventually prove injurious and mischievous to the good people of this county. Your memorialists are therefore of opinion that the prayer of the said petition is unreasonable, and ought not to be granted.

Alexandria, 25th February 1814.

Wm. Fowle,	R Veitch
A. Moore	Jno. Richardson, J. P
Robert Conway	N. S. Wise
John C. Ladd	Jno Scholfield
Phineas Janney	William Fox
Newton Kune	John D. Brown
Thos. Semmes	Wm J. Lee
Wm. Smith	Thomas Moore
Charles Bennett	Horatio C. Scott
Charles Lee	Wm. H. Brown

J Sandelboy
John Tucker
John A. Stewart
Jno. McKnight
Jn B. Paton
Jas Douglas
James Carsen Tower
W. Kennedy
Richard L. Hewitt
Chris. McNealy
W. A. Adams
Nehem S. Carson
Peter C. Keith
Thos. Janney
Richard Stanton
Andrew Hopkins
Dan McLean
C. Page
F. Fairfax
Cam V. Griffith
I A. Ruth
Wm Wilson,
T. Mountbow, Jr.
James McGuire
J. Swift
Wm Stewart
P. Triplett
James C. Deneale
J. Anderson
Wm Washington
JnO Roberts
Wm. Pelham
William S. Moore
Hugh Smith
Mordecai Miller
M Lloyd
Robt. M. Harrison
Thos Laurason
J. D. Simmy
R Taylor

Dwight Metcalf
S. Marsteller
C. P. Thompson
Thomas Vowell
And. W. Jamieson
John Muncarter.
Ch. Alexander
Jonah Thompson
Jacob Hoffman
Ch. Simms
} J of P
F. Peyton
L. Deneale
Chas. J. Catlett
John Mandeville
Joseph Mandeville
N. Herbert
Thomas Irwin
John Hooff
John Jackson
O T Ramsay
Berthurst Dangerfield
W. Yeaton
Jacob Morgan
D. Minot
Geo. Wise
Nath J. Taylor
Chas. Worthington
C. Z. Whiting
Robert Anderson
Thos Langdon
John Janney
Randolph Mott
John Muir
Anthony Rhodes
Craven T. Peyton
Bryant Hampsan
James Harper
Jno. Ross
James Rathbone

To the Senate and house of Representatives of the United States of America in Congress assembled.

The memorial of the Mayor, board of Aldermen and board of Common Council of the City of Washington, respectfully sheweth.

That the inhabitants of this City have suffered great inconvenience, and incurred heavy losses and expenses by the jurisdiction of Justices of the peace being limited, as at present, to the sum of twenty dollars—and it would tend very essentially to their prosperity, if the jurisdiction of Justices were extended to debts amounting to fifty dollars. That a creditor often prefers a relinquishment of a part of his debt, so that he may reduce it to the present amount of a Magistrates jurisdiction, in order that he may avoid the delays of prosecution in the Circuit Court. That the expense of a suit in the Circuit Court frequently exceeds the amount of a small debt, and these expenses are entirely lost, if the debtor should, which often occurs between the institution of the suit and the rendition of the judgment, prove insolvent. That since the severance of this county from Maryland, from which State have been derived the principal part of our laws, it has been found necessary to extend the jurisdiction of Magistrates in that state to the sum of fifty dollars, and the same reasons of policy exist for a similar extension of their jurisdiction here.

Your memorialists further submit, that by the present mode of appointing Constables, many unworthy persons are appointed, and it is, with due deference, believed, that if the power to appoint them were vested in the body of Magistrates, who more generally mix with the people than the Judges of the Circuit Court, more judicious appointments might be made.

They therefore pray that a law may be passed to carry into effect the foregoing objects—And as in duty bound &c.

Saml. W. Smallwood, Mayor

W. W. Seaton
U. Weightman
Geo. Watterston
And. Hunter
} Committee.

To the Honorable the Senate and House of Representatives of the United States of North America in Congress assembled.

The petition and remonstrance of the undersigned citizens of the Town and County of Alexandria in the District of Columbia—respectfully shew, that they have seen a bill reported to the House of Representatives on the 10th of January 1822 by the Committee of the District of Columbia, entitled "A bill to extend the jurisdiction of the Justices of the peace in the recovery of debts, in the District of Columbia. Your petitioners feel themselves bound to lay before Congress their objections to this Bill—which they flatter themselves will be satisfactory to Congress. The professed object of the bill is to expedite the recovery of debts of fifty dollars or under. This will not be the effect of the bill—It will not only delay but increase the expense of the recovery of such debts—It will delay the recovery 1st Because the party defeated may, if the demand is above five dollars, appeal to the Circuit Court—after that Court has decided the case, the party has sixty days to take out a supersedeas, which if he does will suspend the Execution six months longer. This provision of the law will be found as dilatory in practice as that of bringing suits in the Court. 2nd. It will not save expence but increase it. It is almost certain that all who can *will* avail themselves of the delay which the right of appeal and of giving a supersedeas will produce, the consequence will be an increase of expense to the Debtor.

The provision of the Bill which authorizes Justices to issue executions on their Judgements and to keep a docket and record of their proceedings is in part exceptionable. The magistrates ought to keep a minute of their proceeding. But the public convenience will be much better consulted, by requiring the magistrates to return, as the law now in force does, all the papers in the cases they try to the Clerks Office and let executions issue from that office. It was the practical inconvenience which formerly existed, which induced Congress to alter the law and require the papers to be returned to the Clerks Office and the executions to be issued by him. The papers are all preserved in one place and a Docket of all the executions kept in the place, where those interested might apply for any information they need concerning any case decided on by a Magistrate. The

mode contemplated by the present bill, is insecure and troublesome—insecure, because the papers and docket are to be kept in a private house; and troublesome because there may be a dozen or more places, where a person not a party to the case, who may need information, must apply before he can get the information which the papers or docket would afford him. The Bill contemplates increasing the Magistrate's fees- This may be right, but there is no table of fees in the bill.- It refers to a law of Maryland, which is not accessible to the people in general—at least of Alexandria County. The Magistrates may charge no greater fee than this Law allows. But if they do how is the error to be detected? The party injured who, most probably is a poor man will have to send to Maryland to know what are the fees allowed for certain services to the Magistrates of Baltimore by the Law of that State passed in 1819. The Bill also provides that if a party loses his debt, by means of the neglect or omission of the Justice, who renders the Judgement, that the Magistrate shall be answerable for the debt thus lost—According to the bill, the negligent Magistrate may be tried before a Magistrate who may have himself been negligent—and how is the neglect to be proved? All the papers documents and docketts are in the possession of the Magistrate charged with the neglect—The Bill does not provide that any person may have any right to examinine the Magistrates Docket—all it provides is that he shall furnish either party with a copy of the Judgement.

The most serious objection in the opinion of your memorialists is that Congress has not the power to extend the jurisdiction, in the mode contemplated by the bill, of a single Justice of the peace to any sum above twenty dollars,— By the 7th Amendment to the Constitution it is declared, that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved."

Your memorialists feel confident, that Congress will not sanction a provision which is in the very teeth of the Constitution. The extending of the jurisdiction of a single magistrate, when it is recollected, how totally uninformed they generally are of Judicial proceedings, and how they are selected, is a subject that in the opinion of your memorialists requires to be well weighed. Some of your memorialists are too well acquainted with the mode often adopted by Magis-

trates in the administration of Justice. They are too apt to disregard all law and usage—and adopt their crude notions of law and right. Some of us could recount cases, which will not bear examination. Your memorialists are well satisfied that neither Justice, public convenience, or any sound principle of policy requires the passage of the bill now before the House of Representatives—or that the Jurisdiction of the Magistrates should be extended in any form, even with the right of empanelling a Jury. For a single magistrate to empanel a Jury to try a case before him, would be increasing expence and delay without ultimately attaining the ends of Justice. Experience has taught some of us that the remedy would be worse than the evil.

All of which your memorialists respectfully submit.

Thos Swann	Wm Evans
R. J. Taylor	Isaac Robbins
P. R. Fendall	Thos Bladen
Thomas F. Mason	Oliver Norris
M. L. Ball	Jacob Hoffman
Michael McCloskey	W. Yeaton
D. Minor	Jno D. Herbert
Presley Barker	F W. Hewitt
Samuel Mark	J. T. Ramsay
H. W. Ashton	R. C. Mason
Robt. Barry	J. L. Smoot
Edw. Pitman	Dav M Black
Geo. Coleman	William W. Scott
Jas Allison	
Alfred Lee	
A. M. Rose	Benj. C. Wood
John I Stewart	N Herbert
John H. Duffey	M Herbert
B. Hampsan	M Bayly, Jr.
Jos H. Hampsan	B. B. Ashton
Wm Harper, Jr	Mann Randolph Page
Wm Harper	Chas C. Lee
Th. T Bracchus	Colin Auld
Thos. L. Martin	W. A Harris
West Ashton	Hugh Smith
Francis Peyton, Junr.	A. L. Bonner
J. S. Scott	Wm L. Cranell
Thomas Mount	Sam M. Janney
Jas. Douglas, Jr.	H. Clagett

A. O. Douglas
Edwd. J. Lee
M Lloyd
A. .Newton
Edw. Stabler
Wm Stabler
Wm P. Burn
Samuel Harper
R. T. Ramsay
R. W. Poor
J. L. McKneud
Benj. C. Ashton
Jno. Popham
C. I. Lee, Jr.
John Hooff..
John Grubb
John A. Jones
P. H. Minor
W. H. Rice
Francis Steell
Richd. H. Clagett
J Vase
Pharez Shoop
Charles Scott
Anb Vase
Charles Bennett
J. B. Mikolls
Jacob Morgan
Nath. Battes
C. P. Thompson
Bathuse Dangerfield
J. H. Hooe
James Heithburn
C. Page
Mordecai Miller
Marsteller
Jno C Powell
Lewis Hooff
S Snowden

PETITION

From Citizens of Alexandria in favor of the Extension of the jurisdiction of Magistrates.

The Memorial of the undersigned inhabitants of the Town of Alexandria, beg leave respectfully to represent to your Honourable Body, that they have seen, with the liveliest emotions, a Bill before your Honourable Body extending the Jurisdiction of the Magistrates in the District of Columbia, in as much as they believe it will both expedite Justice, and greatly lessen the expence in the attainment thereof—That the Law wou'd be a salutary one, and highly acceptable to the people—That it wou'd lessen the burden of the debtor in defending, and facilitate their recoveries in prosecuting their Just claims—That it wou'd destroy that undue priviledge which the unjust debtor now has over the creditor, under the existing state of things, which enables him to protract recoveries for small sums, as long as for large ones, thereby compelling the creditor either to com-

promise at the will and pleasuref the debtor, or go to Law, and in the interim to submit to very deprivation and distress, superadded to which in may cases their total inability to advance the required Fee to ı attorney to commence a suit for the prosecution of a Jt debt, amounts to almost a denial of Justice.

It is well known to many of yo memorialists that suits have been instituted in the Courf this County, where the debt in controversy did not exed 40$ and yet the legal fees taxed to the attorney alor amounted to 15$ towit 5$ against the drawer, and 5$ ch against two endorsers, making the 15$ besides the exnces of Clerk and other fees in three distinct suits, and s in proportion for every endorser, when one suit before single magistrate wou'd have subserved all the purposes the many in Court.

Your Memorialists have leaed with surprise, that a petition has been got up, adver to this bill, a course as unlooked for as it is manifest incompatible with the public good and that they have hesitation in saying, as their well grounded opinion, that–5 of the people of this Town, are decidedly in favour of he passage of the bill in question, and that those, with wom the opposition to it, originated, they feel authorised saying, are particularly & personally interested therein.

Your Memorialists feel particarly gratified to observe in this Bill, a provision for debts under twenty dollars, by giveing power to the Magistrat to rule the defendant to give bail, it having been heretofo a source of much evil and generally considered a publi Grieveance.

Your memorialists deem it tir duty to state that so satisfied are they that your Honrable Body would have exercised a sound and proper distion in this matter, that they wou'd not have ever thoug it necessary to trouble your Honourable Body with th memorial, but for fear, that their silence upon the subje might imply an acquiescence in the wishes of those whose personal interests (generally speaking) have induc them to sign one of an oppisite character. and in duty ound will ever pray &c

Matthias Snyder	H. . Whitney
Saml. Morrow	Cha es C. Smoot
Danl. Shryor	Jon han Field

	his
William Isabell	James x Curry
	mark
Richard Howell	James Robinson
	John H. Evans
Robert Fulton	Benj. Dyer
Jan[a] C. May	Sam[l] Simmons
C. A. Swain	Jeremiah Grimes
	Arch McClean
John McDonald	Thomas C. Juley
David Hill	Louis H. Labills Jr.
John Creaighton	George Drinker
Henry Bayne	Joseph Brodus
Richard Wilkinson	James Allison
Wm Reynolds	Loudan Campbell
William Stewart	Philip P. Johnston
Henry Yeader	Daniel Wright
Ephrain Evans	Richard Rack
David G. Pultzman	George Swain
John Suter	John Boyd
James MacKensie	Zack Gardner
David Dick	Wm. Millan
Joseph Plumb	H. Webster
Isaa Sleigh	Thos. H. Donaldson
John Shakes	Thomas Allen
Thos Steel	Carlo Columbas
Jas. Vansant	Geo. Jacobs
Richard Emberson	Mahken Schofield
Issac Robbing—retracting from his signature against the Law—on mature reflection.	
N. R. Fitzhugh	Samuel Peach
Jas. D. Kerr—retracting from his signature against the Law on mature reflection.	Gregory Plummer
	John H. Wilbur
John C. Goverman	J. B. Rookes
	his
L & L Chamberlain	John x Wiggs
	mark
J. Shackelfor	Saml. Lindsay

Jonah Isabell
Thomaws Withington
Thomas Taylor
John Z Sanner
Allen P. Lellane
John P Walkam
William Powell
Albert P. Waugh
Wm. C. McMechen
J. C. Bouwers
Wm Harry
Augustus Bultz
John Carnel
George Painter
Sam Bunting
Josiah H. Davis
Edw. Corning
Thomas M. Davis
Andrew Schofield
R. H. Clements
Thos Sanford
James McGuire
Saml Smith
Jesse Whery
Sam Messersmith
E. Corning
John W. Cobb
Henry Chattam
Frederick Luckett
Henry P. Williams
Thos Massie
Ewd. C. Fletcher
John R. Jackson
Jas. C. Ledwick
Benj. Waters, Jr.
John Hollensburg
John Cohagan
his
Henry x Posey
mark
William Wood
Caleb Vernon
John Mark
Henry Hobb
John Wood
W. B. Wilson.

The Petition of the undersigned, Citizens of
in the District of Columbia,

RESPECTFULLY REPRESENTS: THAT,

At the first session of the sixteenth Congress, a petition was presented, signed by the inhabitants of Washington generally, for the extension of the jurisdiction of Magistrates in the District of Columbia: That a committee of your honorable body, after a patient investigation of the merits of the subject, reported a bill, at the same session, for carrying that object into effect, which was not adopted, we have believed, because of the pressure of business of an important national character:

That the Mayor and Board of Aldermen, and Board of Common Council, of the city of Washington, have drawn the attention of your honorable body to this subject, at your

present session, and a committee of your honorable body has promptly and kindly reported a new bill, the general provisions of which meet with the wishes, decidedly, as your petitioners believe of the great mass of the population of this district: although efforts have been made by a few designing men, whose interests will be affected by this measure, to produce a contrary impression on your honorable body:

That it is not the intention of your petitioners to enter into arguments on either the constitutonality or expediency of the measure in question: The constitutionality of it, being, as they believe, established, by the decisions of twenty-one, is not twenty-three, of the states and territories, in their Legislatures and Courts; and by a decision of the Supreme Court in a case which involved the same principle. Its expediency comes home to the business of every individual of this community, and, we trust, will be apparent to the experience and wisdom of Congress:

The object of this petitioner is simply to aid our fellow citizens of Alexandria and Georgetown in making known to your honorable body, that the *general provisions of the bill referred to meet with the decided approbation of your petitioners; and to pray, that it may be passed into a law, as soon as the consideration of important national objects will permit*; together with such amendments, (if any be wanting), as, to the wisdom of your honorable body, may seem meet and proper.

T. Winn	George Collard
S. P. Young	Warder Bayly
Alex M. Williams	Wm Ratcliff
James Rhodes	Henry Aukward
Thos Sayres	Peter Little
Richard Shekel	Wm Lambell
Abiyah Peck	Seth Robinson
Christopher Fell	Jeremiah Perkins
James Jones	James Scallan
J. Doemetz	Lewis Larner
William Praeet	Lawson Pearson
Jon^{a} Prout	Lancitot Griffin
Francis Cross	J. Skerett.
Andw. Forrest	John Jenkins
Jeremiah Hammett	Philemon Moss
Geo. Adams	Thos. Sangston
Wm Sheriden	Edwd. Douglas

Thos. Munny	Alexander Boothe	
Thos. Reynolds	Stephen Rigden	
Jno Thomas	George Duckworth	
R. Blanford	Joseph Venable	
John F. Speiser	Ja. Carbury	
Henry Hannah	Edward W. Clark	
John Winmon	Robt. E. Searcy	
Robert Clark	Israel Little	
Robert Brown	Matthew Wright	
Francis Hayse	Peter Pearson	
Owen McCall	William Elder	
Nicholas Cassidy	Wm. M. McCauley	
W. Wood	Alex Forrest	
Thos J. Coffer	John B. Forrest	
Adam Loyd	M Brilley	
G Chapin	John David Ahl	
Lev. B. Simmons	Jas. Owner	
C. Jones	Jas Vermillion	
John H. Beall	Nathaniel Carsen	D. C. Mgr.
John B. Hoote	James Morrison	
Samuel Hilton	B. Thomas	
Thos. Fingey	Jacob Smull	
Mord. Booth.	Edward Boothe	
H Capin	Henry Boothe	
Rich Barry	James Degges	
Richard O Hare	Thos Roby	
Benjamin King	Richard Wildey	
George B. Scott	Charles Rette	
Thomas Reddish	John Cook	
Thomas Lynall	Saml. Townsend	
Samuel Fowler	Robert Rose	
Antonio Catalano	Timothy Crowley	
Edwd. Merritt	George Cox	
Horatio Kingsbury	George Grant	
Daniel Page		
Titus Barcraft	Jesse Barnes	
John W. Smoot	Mich'l Quigley	
John Bean	Edwd. Blane	
George Bean	William Peter	
Agoston Terry	William Howard	
John Green	William Doughty	
Wm Cox	John Newland	
Tobias Martin	Wm Easby	

Jonathan Criddle
Sam B. Ellis
Joseph Johnson
George Lee
Valentine Pomax.
Jas D. Woodsen
Richard Wilson
Richard McClosky
Thomas Clark
James Crandle
John Speiden
Jno. B. Ferguson.
Wm. Owner
Thomas Whitefield
James Friend
Abm. Fowler
W Crittenden
Wm Buckingham
N Millikin
Philip Stuart
W. H. Gunnell
H. V. Hill
Thos Hughes
John Queen
Fredk Cana
John Pic
W. W. Goldsborough

Joseph Fowler

H Braner
Solomon Graves
Henry A. Lowe

Jas Clare
Gustavus Poudret
John Dunn
William H. Barnes
John Hoovere
William Smith
William Nottingham
Geo. W. Cauron

James Bury
Benj. King
Wm Thomas
James Tucker
Ahial Cannon
Dennis Osborn
Henry Ingle
Geo Beal
W. A. Bradly
John H Reily
John McClelland
Rob. Clarke
Jamus Spalding
B. Bryan
Enoch Bryan
Wm L. McPherson
Matthew Trimble
Lewin Talburtt
Thos Howard
Chas. Venable
Philip Otterback
Nicholas Vickery
David Young
William Cross
Jesse Evans
Thomas Foote
Andw Brown

Wm x Rider
his mark

Joseph Fugitt
Thos H. Brown
Erick Sanderson
Alexander Talburt
D A McMunson
James Towley
James Middleton
Jos Ingle
Th. L. Thruston
J Harlow
Philip Reily
John Collnen

John Sanford
Charles Hamilton
William A. Riley
John Fisher
Abraham Connor
David Cook
Thomas Vaile
Mikel Carroll
James Winseth
Saluadora Catalano
Barney O'Donnell
James Flynn
Michael Mahoney
W McCormick
H. McCormick
Daniel O'Donnell
Hugh O'Donnell
Moreton Colins
John Lane
James Johnston
David Watterston
Zaihabia Hazel
Daniel Goldridge
John Nevitt
Samuel Geulding
Jos Thorbaug
Borthick Gillespie
Walter Reynolds
James Byrne
Wm Austin
James Williams
John Jones
Giovanni Androen
L. Edgar
Johna Couche
Joseph F Marsbee
Pringle Slyt
Lawrence Flynn
Dillen Hodgson
Philip Ennis
Theo Pettigrew
Simeon Matlock

Patrick McGoughar
John Lynch
Patrick McGovern
John Holohan
James Sweeny
William Preston
Michael Firmen
D Homan
James Ewell
Alexander Rocke
James Clark
William Sutherland
William Whitelaw
John Bonthron
John Daur
Peter Miles
William Smith
William Allridge
R. P. Sherwood
Philip Morgan
R Turnbull
Michael Lupton
John Graham
John Bottomley
James Goodwin
Patrick Hefferman
James O Reele
Robert Wood
Robert Craig
John Logan
Thomas McIntosh.
George Philip
Francis Tardella
Jeane Pierre
Thomas Hirchel
C. B. Hamilton
Saml P. Lowe
Benjamin Bean
Adam Lindsay
Wm Ingle
Thos Fowler
W Deans

Charles H. Varden
Jacob Denemen
Chas. B. Collan
George Sanford
Wm R Maddox
Thomas Cross
James White
George Lake
Benj. Kinley
Robert Scallan
Ignatius F Wisemon
John Spalding
Samuel Black
John Gulloway
Robard Taskey
John Mack Daniel

William Wise.

Thos Holliday
Mac^{e} Carroll
Thos Goodall
Charles Kelley
William Willis
Cornelius E Turk
Bennet Goddard
Saull Hardman
Walter Hutchinson
Thos Williams
Jos Martin
John Judge
Joshua Willis
Walter Langley
Richard Cole.
John Mace.

John T. Laskey
Jarvis Pumphrey
W Witherspoon
Charles Griffin.
John Brannan
Monahan Slater
Benedict Miles
Henry Lurtz
Charles Langley
Horace Frazier
James Curlow
Patrick Frevy
James Walsh
James Mackey
Moses Baken
Leonard Rush

his
Jonas x Marshal
mark

Frederick Own
Michael O'Brien
John Paine
Washington Duwall
Thomas Gibson
Patrick Kain
John McDonald
James Earby
Stanslaw Rigsby
Friederich Bopp
William Jones.

To the Honorable the Senate and House of Representatives of the United States of North America in Congress assembled.

The petition and remonstrance of the unsigned, citizens of the Town and County of Alexandria, in the District

der
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of Columbia. Respectfully shew that they have seen a Bill reported to the House of Representatives on the 16th of January 1822, by the Committee of the District of Columbia, entitled "A Bill to extend the Jurisdiction of the Justices of the peace, in the recovery of debts, in the District of Columbia". Your Petitioners feel themselves bound to lay before Congress their objections to this Bill, which they flatter themselves will be satisfactory to Congress. The proposed object of the Bill is to expedite the recovery of debts of fifty dollars or under. This will not be the effect of this Bill. It will not only delay but increase the expense of the recovery of such debts. It will delay the recovery, 1st Because the party defeated may if the demand is above five dollars, appeal to the Circuit Court, and after that Court has decided the case, the party has sixty days to take out a supersedeas, which if he does will suspend the execution six months longer, this provision of the law will be found as dilatory in practice as that of bringing suits in the Court. 2d. It will not save expense, but increase it, It is almost certain that all who can will avail themselves of the delay, which the right of appeal and giveing a supersedeas Bond will produce, The consequence will be an increase of expense to the debtor.

The provision of the Bill which authorises Justices to issue executions on their Judgments, and to keep a Docket and record of their proceedings is in part exceptionable,— The magistrates ought to keep a minute of their proceedings, But the public convenience will be much better consulted, by requiring the magistrates to return as the law now in force does, all the papers in the cases they try to the Clerks office and let executions issue from that office. It was the practical inconvenience which formally existed which induced Congress to alter the law and require the papers to be returned to the Clerk's office, and the executions to issue by him—The papers are all preserved in one place and a Docket of all the executions kept in one place; where those interested might apply for any information they need concerning any case decided on by a magistrate. The mode contemplated by the present Bill, is insecure and troublesome; insecure; because the papers and Docket are to be kept in a private house, and troublesome because, there may be a dozen or more places where a person not a party to the case, who may seek information, must apply

before he can get the information, which the papers or Docket would afford him. The Bill contemplates increasing the magistrates fees—This may be right, but there is no table of fees in the Bill. It refers to the law of Maryland, which is not accessible to the people in general, at least of Alexandria County, The magistrates may charge no greater fees than this law alllows, But if they do, how is the error to be detected; The party injured, who most generally will be a poor man, will have to send to Maryland to know what are the fees allowed for certain cervices, to the magistrates of Baltimore, by the law of that State passed in 1819. The Bill also provides, that if a party looses his debt by means of the neglect or omission of the Justices who renders the Judgment, that the Magistrate shall be answerable for the debt thus lost, according to this Bill, the negligent Magistrate may be tried before a magistrate, who may have himself been negligent, and how is the neglect to be proved, all the papers, documents and debts are in the possession of the Magistrate charged with neglect. The Bill does not provide that any person may have any right to examine the magistrates Docket, all it proscribes is that he shall furnish either party with a copy of the Judgment. The most serious objection in the opinion of your Memorialists is, that Congress has not the power to extend the Jurisdiction in the mode contemplated by this Bill, of a single magistrate, to any sum above twenty dollars. By the Seventh amendment to the constitution, It is declared, that "In suits at Common law, where the value in controversey shall exceed twenty dollars, the right of trial by Jury shall be preserved."

Your Memorialists feel a perfect confidence, that Congress will not sanction a provision which is in the very teeth of the constitution,—The extending of the Jurisdiction of a single magistrate, when it is recollected how totally uninformed they are in general of Judicial proceedings and how they are selected, is a subject that in the opinion of your Memorialists requires to be well weighed. Some of your Memorialists are too well acquainted with the mode often adopted by magistrates in the administration of Justice, They are too apt to disregard all law and usage, and adopt their crude notions of law and right, Some of us could recount cases, which will not bear examination. Your

Memorialists are well satisfied, that neither Justice, public convenience or any sound principle of policy require the passage of the Bill now before the House of Representatives —or that the Jurisdiction of the Magistrates should be extended in any form, even with the right of empanelling a Jury. For a single magistrate to empanell a Jury to try a case before him would be increasing expense and delay, without ultimately attaining the ends of Justice. Experience has tought some of us that the remedy would be worse than the evil. The increasing the Jurisdiction of Justices of the peace beyond twenty dollars, will of course increase the number of appeals to the Court, and thereby prolong the Sessions of the Court which as an inevitable consequence will increase the expenses of the Court, now payable by the United States.

If the real object of the Bill is to expedite the administration of Justice; This can be effected in a more constitutional and less exceptionably manner, than that proposed by this Bill. Let Congress pass the body of laws which was prepared by the Judges of this District. In this Code the modern laws of Virginia, whereby justice is now more expeditiously administered in that State than in other in the Union, have been introduced.

All which your Memorialists respectfully submit.

P. E. Hoffman	Reuben S. Bowie
Wm Moss	Gusts. A. Brown, M. D.
Robt. Mandeville	T. J. Minor
A Moore	Robt. Jamieson.
Ignatius Baggett	John Smith
Geo. W. Slocum	Abiel Holbrook
R Veitch	Jonah Thompson
John McEwen	Robt. Brocket,
G? W. Paysons	Wm Herbert
Adam Lynn	R Wood
Dwight Metcalf	W. E. Thompson
West Ashton	Thomas Bird.
Robt. Conway.	

To The Honourable The Senate and House of Representatives of the United States of America in Congress assembled.

It being stated to us the subscribing members of the board of Aldermen and of the board of Common Council of the

Corporation of George Town: That as Congress are now acting on The Bill to extend the Jurisdiction of the Justices of the peace for The District of Columbia it would be right and proper for us (as There is not time to have The wishes of The people of The town ascertained by a town meeting, to State to Congress That in our opinion a very large majority of The people of The town are favorable to The extension—and That it would be proper That The Justices of The peace at The request of either party should be authorised to Summon a Jury to try any Case that may be before them on a warrant upon the debt—exceeds twenty dollars.

John Kurtz David English Dan Bussard James A. Magruder Nimian Magruder	Aldermen.
Jere W. Bronaugh Wm Hayman, Jr Rom^{e} Riggs John Pickrell Daniel Kurtz John Posebe John Nathan	Members of the Board of Common Council.

To the Senate of the United States

The Memorial of the undersigned Citizens of Washington, repsectfully represents,

That the duties now assigned to the Justices of the Peace and Constables, within the District of Columbia, are fully commensurate with the competency and responsibility of such a tribunal: That the extended jurisdiction proposed to be given by the Bill now before the Senate would not, in their opinion, promote the public good: And that the Jury Trial, therein provided, has no tendency to subserve the purposes for which it was designed, and may be productive of great inconvenience and abuse.

Wherefore your memorialists pray that the Bill extending the jurisdiction of Justices of the Peace may not pass.

Washington Feby. 1823.

W. Jones
Thomas Munroe
Geo Sweeney
Jno Bailey
Sam Fitzhugh
Andrew Coyle
W Bradley
John MacLeod
Chauncey Barstow
Jonathan Elliott
Wm G. Elliott
Stephen M Gray
Jo Haskell
Jos Taylor
David Shoemaker
Thos Arbuckle
John Brannan
D. M. Berry
J. T. Frost
Overton Carr
Saml. S. Hamilton
J. F. Caldwell
Henry Hillman
E. D. Krafft
Moses Poore
Benjamin Bunn
John Trapp
M Bayley
Fleet Smith
E. B. Caldwell
Saml Turner, Jr.
Jno McDonald
Fredk Valley
J Coyle
Lewis H. Macken.

Letter to Hon. William Smith of the Senate, Washington City.

Alexandria 20th February, 1823.

Dear Sir:

I take the liberty to enclose to you another memorial from a number of the citizens of this place—among whom are some of our most distinguished Lawyers—and some of the Justices of the peace of this county, which memorial you will oblige us by laying before the Senate. The object of the passage of the Memorial is to prevent if we can ^ the bill now before you for extending the Jurisdiction of the Justices of the peace from twenty to fifty dollars. The bill is very defective in its details and as it now stands calculated to be instrumental of much mischief and inconvenience.

I also take the liberty of enclosing to you a statement which will shew what will be the costs in ordinary cases in the court here where the parties do not delay their cases and keep them in court year after year by continuances—and what will be the costs under the bill proposed to Sec passed into a law.

I hope the Senate if they pass the bill will amend it in the parts within mentioned in the memorial.

I am dear Smith with
respect
Your mo: obd. servt.
Edw. J. Lee.

A much larger number of petitions could have been procured to the paper sent if there was time for it. Those who have signed the memorial declare that the general opinion of the people here is adverse to it.

Ed: J. Lee.

To the Honorable the Senate of the United States.

The petition & remonstrance of the undersigned citizens of the Town of Alexandria in the District of Columbia, most respectfully represent—That they have very serious & in their opinion very solid objections to the passage of the Bill, which is now depending before the Senate for the extension of the jurisdiction of the justices of the peace in the District of Columbia from twenty to fifty dollars.

Your memoralists consider that to give a justice exclusive jurisdiction in this description of cases is not only a violation of the true intent & meaning of the Constitution, which requires a trial by jury in all cases where the value in controversy exceeds twenty Dollars, but it deprives the party of the right to bring originally his case of fifty dollars value before a more competent tribunal. The Bill proposes to change a principle of Jurisprudence, to which the people of Alexandria have been long attached, & which has existed in Virginia from the foundation of the Commonwealth. Your memoralists are unwilling that so important a change in their judicial rights should be made so suddenly, expecially when no great public benefit is to result from the alteration. If the Bill be right in its main principle yet

it is very defective in its details. It will not expedite the recovery of debts, nor diminish the expense attendant thereon, but on the contrary will delay the one & increase the other.

It will not lessen the expense & inconvenience to the poorer class of the community but will place that portion of society in the exclusive power of a set of Officers, whose interest it will be to multiply petty litigations, & who even if perfectly disinterested will in too many instances make their crude notions of law & equity the rule of their decisions. The Bill excludes the Creditor from the right of bringing his case before a tribunal rendered competent by their legal acquirements unless he will first subject himself to the delay & expense of a trial before a Justice of the peace, after which he may take his case to the Circuit Court and there run the risque of being charged with the costs of a second jury & of a second trial.

Among the many objections to the Bill we will point out the following—

1st. If a jury be required & one summoned, there is no power vested in the magistrate to coerce the jurors to attend. The remuneration allowed the Jury is too inconsiderable & there is no provision declaring how that shall be paid, nor is the magistrate authorized to charge the unsuccessful party with the costs of the trial—

2nd. The law does not authorize the venire facias to be returned before any other justice of the peace than he who issued it.

3rd. The section of the Law, which directs that the executions shall be no longer issued from the Office of the Clerk of the Court & that the Justices are to retain the papers & issue the executions, will be productive of great public inconvenience, which the act of Congress passed in 1802 Vol. 6th page 178 was intended to remedy.—

4th. There is no provision made by the Bill for defraying the expense of the room where the Juries which may be assembled before a magistrate are to set (as there may be a dozen of these Juries in session at once in each County, who could not be accommodated in the Court room of the County) unless it be intended that the Justice of the peace before whom the trial is had shall at his own expense furnish the room for the Jury. If this be the intention, it had

better be plainly expressed, otherwise the Justice will be apt to tax the parties with these costs.–

5th. Your memorialists consider the trial by Jury as given by this Bill, the mere shadow of the Jury trial, or worse than not having such a trial at all. They would, were it consistent with the constitution, prefer the decision of a single magistrate to the verdict of such a Jury or a Constable will be able to collect under the provisions of this Bill.

If the Magistrates have no power to compel the attendance of persons summoned whose compensation when empanneled is to be the paltry one of a single ninepence, what kind of a Jury will the weight & authority of a Constable be able to procure? Your memorialists are well assured that the Jury will generally be composed of the most indifferent of the community. Your memorialists most respectfully press upon your Honorable body the enquiry, what possible public good can result by changing the law of Congress passed in 1802 which required the magistrates to return their warrants & Judgments to the Clerk's Office, whence executions are by that Law to be issued & there returned & preserved for future use. On the contrary will not great public inconvenience, trouble & loss result from the change? The chance of loosing & misplacing papers by Justices of the Peace is much greater than exists in such an Office as that of the Clerk of a Court.–

All of which is respectfully submitted.

John Neill.

Edw J Lee	Beckwith B. Ashton
A Moore	Colin Auld
D Minor	Sam B Larmaur
I am opposed to the Bill– Thos Swann	Robt W Scott
M. Bayly, Jr	Jno C Vowell
Robt. Conway	John Hooff
Zes Garden	Alex Mackenzie
Wm Rhodes	Edwd T Farish
Jacob Hoffman	C P Thompson
P R Fendall	W E Thompson
George Drinkler	Thomas W Hewitt
Richd H. Little	D L McKenna
Jno Popham	Wm A McRea
Benj. C. Ashton	George Taylor Jr.

Chas C Lee
Geo Coleman
Jno A Parker
N Herbert
H Clagett
Peter B Beverley
Thomas Cresse
Thos Vowell
J Sanderson
R Veitch
John C Mandell
S Snowden
Geo. S. Hough
Robinson G Hough
West Ashton
William Washington
Russel Stevens
Wm G Cranch
Bernard Bryan
Jas M McRea
W. M Norgan
Benj C Wood
Saml Simmons
J R Markwand
Jas L Greer
John C Groverman
E Massoletio
Dan McLoud
John Lausan
J H Duffey
William Lyle
Jos F Hallowell
Joseph C Marbury
Jas McKenzie
Jas P. Martin
Thos L. Martin
Joh A Stewart
Bern Hooe, Jr

Gentlemen of the Committee in the Senate of the U. S. of the Petition of the Majistrates in the District of Colum[a]

Permit us to explain to you, presuming that you may not have, a perfect recollection on the subject, the difference, in the manner of practice, in the collection of small Debts in the Counties of Washington and Alexandria in the District of Col[a]

At the time that Congress assumed the Jurisdiction of the District of Columbia, they adopted (as is no doubt within your recollection) the Laws of the State of Maryland, as they then stood, to be in force in Washington County – and the Laws of the State of Virginia to be in force in the County of Alexandria; fixing, at the same time the extent of the Jurisdiction of a single Justice to Twenty dollars.

The Jurisdiction, at the time of the assumption, of a single Justice, in the State of Maryland was £10 M[d]. Currency, with an appellant Jurisdiction to the County Court, for all sums over twenty shillings by the Judgement of a

single magistrate – The Jurisdiction at the time, of a single Justice in the State of Virginia, was $5.00 only without an appeal – that consequently, under the present law, no appeal can be had from the Judgement of a single majistrate in the County of Alexandria, however arbitrary it may be – Neither is there any stay of execution after judgment, by supersedeas in the County of Alexandria as is the practice in the County of Washington – which opperates, at many times, much to the prejudice of Poor Persons. by taking from them every-
they
thing that possess which relates to the conveniences of life,
before they can look around to get relief.

The majistrates of the State of Virginia not being allowed any compensation for their services Congress enacted, that the Majistrates for the County of Alexandria should receive the same fees as was allowed the Majistrates in the State of Maryland.

The Constables fees in the County of Alexandria is not more than two thirds as much for the same services, as the Constables are allowed in the County of Washington.

A process for debt, in the County of Washington, requires that the Constable, shall arrest the Defendant, and keep him into his custody—(if not he is made liable for the amount of the debt) until a trial shall be had.

A Process in the County of Alexandria requires that the Constable, summons the defendant to appear before the Majistrate, and an neglect to attend—Judgement is rendered against him by default.

James M. Varnum.

The foregoing is believed to be correct.
by J. M. V.

Committee on part of the Majistrates of the
District of Columbia.

The practice of the Clerk of the County issuing on the Judgements of Majistrates in the County of Washington is attended with great inconvenience & very often total loss of the Debt & Cost in that part of the County including George Town—to the knowledge of the subscriber several Hundred Dollars have been lost since he has been in commission owing to this practice—The Clerks Office being situated near three miles from this section of the County, it is fre-

quently impossible to procure an issue in time to detain the Defend't after Judgement; to which may be added the loss of time in going & returning with the Precept—The subscriber believes in no other part of the United States is the Clerk of the County vested with authority to issue on the Judgements of the Magistrates and believes the present practice was adopted at a time when the Magistrates received no compensation or *fees* of Office.—The People of this section of the County have several times petitioned for a repeal of the Practice above complained of, but owing to some other and causes unknown grievances petitioned for in the same paper, have not been relieved of this.

John Ott.

I am confident that the above statement is correct.

James M Varnum.

The costs in a suit brought in the Circuit Court of Alexandria County from the issuing of the Writ to the issuing of an Execution, where no counsel is employed and the defendant not held to bail.—

Capias 18 docketting suit 8 entereing return of Writ 18.		$ .44
filing declaration 18 Order 26 rule to appear 35.....		.79
Order 26 Writ of Inquiry 18.....		.44
Entering up Judgment 18 Copy 18 taxing costs 20	1.34	
Copy 20 filing the papers 18 Execution 40	3.01	
Marshal's fee for serving Writ.....		.50
		$3.51

Costs in a case where the Plaintiff employs Counsel and the defendant not held to bail.–

Capias 18 docketting 8 entering Attorney 8 entering return 18.....		.52
filing declaration 18 Order 26 Rule 35.....		.79
Order 26 Writ of Inquiry 18.....		.44
Entering Judgment 18 Copy 18 taxing Costs 20	1.34	
copy 20 filing papers 18 Execution 40.....	3.09	
Attorney's fee		5.00
Marshal's do		.50
		8.59

Costs in a case where both parties employ Counsel and the defendant is not held to bail.—

Capias 18 docketting 8 entering Attorney 8 return 18 filinf declaration 18	$ .70
Order 26 rule 35, Order 26 Writ of Inquiry 18 Order 26 to set aside Writ of Inquiry, Joinder to plea of defendant 18	1.49
Judgment 18 Copy 18 taxing costs 20 copy 20 filing papers 18 Execution 40	1.34
	3.53
Attorney's fee	5.00
Marshal's fee	.50
	$9.03

Costs in a Case where Counsel are employed, the defendant held to bail and a Jury empanneled–

Capias 18 docketting 8 Attorney 8 return 18 filing declaration 18	$ .70
Order 26 rule 35, Order 26 Writ of Inquiry 18	1.05
Order 26 Joinder 18 entering rule 35 special bail 18	.97
Swaring Jury 70 Bailiff 18	.88
entering Judgment 18 Copy 18 taxing costs 20 copy 20 filing papers 18 Execution 40	1.34
	$4.94
Attorney's fee	5.
Marshal's fee for serving Writ & empanneling Jury	1.55
	$11.49

The foregoing are the Plaintiffs costs in the different cases as stated.

The defendant's costs where Counsel is employed are	$ 5.52
When ther is no counsel, the defendant's costs are...	.52

As the law now exists in the County of Alexandria the costs which a Justice of the Peace is entitled to receive where no witnesses are summoned are as follows:—

To the Justices services	$ .58
To the Constables services	.50
If a Witness or Witnesses are summoned the Justice is entitled to receive in addition for each subpoena	.12½c
If the Witness is examined for each oath administered by the Justice to the witness	6 cts.
If the party who gets the warrant makes oath to his a/c	6
If a Witness is summ[d] the Constable's fees for sumg. each witness	.12½
to which is to be added the costs of Execution 25	
To which is to be added the costs authorised by the Bill pending before the Senate	.87½
making altogether	$2.57½
If a supersedeas Bond is given	$ .12½
If a Jury is required the Justice shall receive	.37½
the Constable	.37½
	.86½

The above are the costs if no witnesses are sum'd.

If summons is issued for a Witness to attend before the Jury the Magistrate will be entitled for the summons	.12½
For swearing the witness	6
the Constable for summoning the Witness	.12½
	$ .31
If the party who demands a Jury chooses to have Counsel his adversary, it is probable, will also be obliged to employ Counsel, which will increase the expense	5.00 / 2.57½
	$. 74

The preceeding is the expense, which by the provisions of the Bill may be incurred before a Justice of the Peace. But if the party who is unsuccessful, thinks proper to appeal to the Circuit Court he may do so, by doing so he may subject his opponent to an expense not less in am't than.. $3.51

$12.25

To the Honorable Senate of the United States.

Your petitioners have but recently heard of and seen a Bill which has passed the House of Representatives extending the Jurisdiction of the Justices of the Peace of the District of Columbia, under certain modifications.

Your petitioners are unwilling that at this late period of the Session, a Bill should be passed, which is to operate more particularly on the poorer class of the Society, and in which is involved a principle of very great moment, to wit whether the Jurisdiction of a single Justice of the peace can be extended constitutionally above Twenty Dollars, on which question there is a contrariety of opinions. Besides this general objection, the Bill itself is very defective in its details by no means calculated to effect a speedy recovery of small debts or to deminish expense.

Your Petitioners therefore pray that this Bill may not be passed into a Law, and that time may be allowed to digest and present to Congress a better Law on the subject. All which is respectfully submitted.

John Suter	Wm Minor
Jno Janney	Abiel Holbrook
John Miles Jr.	R C Mason
J. P. Thompson	John Hoffman
Thomas F. Mason	B Dangerfield
Jacob Morgan	John Thompson
E J Lee, Jr.	Henry Dangerfield
C Scott	Rob. Mandeville
R. P. Wood	Nath Battles
Robert Barry.	James Carson
Jno Roberts	J Muncaster
Jno Vassen	S Shaw

Newspaper Clipping.

"TO THE PUBLIC.

An Inflammatory Address which is issued *this morning* in a hand bill from the office of the Alexandria Gazette, demands our immediate notice. It is without *signature* and without *truth*. The *four* magistrates never signed or *recommended* a bill of the description with which they are charged.

Five magistrates, to wit: Robert Young, Abraham Faw, Joseph Dean, Richard Libby and Amos Alexander, in conjunction with the magistrates of Washington, signed a memorial which contained but a few lines, only asking congress to make such alteration in the mode of collecting small debts as in their judgment might seem proper and necessary. If their names were ever placed to such a bill it was done without their knowledge or consent. But if this publication is a *stratagem* to serve a present purpose under an expectation of producing its *effect* before time could be had to refute it, we trust that the object will be defeated and that our fellow-citizens will make the *enquiry* why this charge was circulated on the *morning of the election*? We suspect that the fear of loosing a fee of 25 cents went much nearer the heart of the gentleman whose sympathies appear to be so highly excited, than any apprehended violation of the constitution. If the object of the memorial had been to *increase* instrad of *diminish* the *Clerk's* fees we presume there would not have been any of these *very nice* objections. We must however content ourselves with merely declaring the publication to be false and which we shall, in our opinion, be able to make it appear is intended for the basest purposes, more fully when the documents in question shall be laid before the public. We have been taken by *surprise* and request our fellow-citizens to give a *right* construction to the object of the authors of the aforesaid hand bill and their abettors. Its nature and the moment selected for its introcduction to the citizens of Alexandria bespeak the design. No further comment at this time is requisite.

ABRAHAM FAW
JOSEPH DEAN
RICHARD LIBBY
AMOS ALEXANDER.

The Memorial of the undersigned inhabitants of the Town of Alexandria beg leave respectfully to represent to your Honorable Body, that they have seen with the liveliest emotions, a Bill before your Honorable Body extending the Jurisdiction of the Magistrates in the District of Columbia, in as much, as they believe it will both expedite Justice, and greatly lessen the expense in the attainment

thereof—that the Law would be a salutary one, and highly acceptable to the People—that it would lessen the burden of the debtor in defending, and facilitate their recoveries in prosecuting *their* just claims—That it would destroy that undue priviledge which the unjust Debtor now has over the creditor under the existing state of things, which enables him to protract recoveries for small sums, as long as for large ones, thereby compelling the creditor either to compromise at the will and pleasure of the Debtor or go to Law, and in the interim, to submit to every deprivation and distress—superadded to which in many cases *their* total inability to advance the required Fee for Attorney to commence a Suit for the prosecution of a bad debt, amounts to almost a denial of Justice.

It is well known to many of your Memoralists that suits have been instituted in the Court of the County where the Debt in controversy did not exceed $40 and yet the legal Fees taxed to the attorney alone, amounted to $15 To wit $5 against the drawer and $5 each against two endorsers, making $15 besides the expense of Clerk and other Fees in three distinct suits, and so in proportion for every endorser, when one Suit before a Single Magistrate would have subserved all the purposes of the many in Court.

Your Memorialists have learned with surprise that a Petition has been got up adverse to this Bill—a course as unlooked for as it is manifestly incompatible with the Public good, and that they have no hesitation in saying, as their well founded belief that 4–5 of the People of this Town are decidedly in favour of the passage of the Bill in Question, and that those with whom the opposition to it originated, they feel authorized in saying are particularly and personally interested therein.

Your Memorialists feel particularly gratified to observe in this Bill, a provision for debts under twenty Dollars, by giving power to the Magistrate to rule the defendant to give Bail. It having been heretofore a source of much evil and generally considered a Public grieveance.

Your Memorialists deem it their duty to state that so satisfied are they, that your Honorable Body would have exercised a sound and proper discretion in this matter, that they would not have even thought it necessary to trouble your Honorable Body with this Memorial but for fear that their silence upon the subject might imply an acquiescence

in the wishes of those whose Personal Interest (generally speaking) have induced them to sign one of an opposite character.

In Duty bound will ever pray &c &c &c.

John Butcher	Guy Atkinson
Chas M Knight	Jno Washingt on
A Deacons	R Withers.
J G Emerson	J. H Runnells
A M Small	Isaac George
Joseph Mandeville	David Carson
Robert C White	Saml B Larmour
Richard L Caine	Henry Dangerfield
Robert S Blackloch	John Green
Robt Hall	A P Gover
Thomas Irwin	Wm Dunlap
Th V Huck	Walter O'Neal
George Coryell	Joseph Dodds
Laurence Hill	Thos E Baird
Jas Sanderson	Wm Edgar
Wm Wilson	Wm Pomery
Wm Duffy	John Thompson
Samuel P Adams	Loughlin Masterson
Jno Corse	Thos Semmes
Peter Hewitt	Jas Corning
Wm True	Simon Dearborn
M Veitch	Edwd M Laughlin
J Swift	C Withers
Davis Bowie	John H Brodero
Hezekiah J Reeves	John Ball
C B ONeal	James Compton
John Longdon	Louis Beelar
James Thomas	James English
Samuel Baggett	Gadandus Hill
Chas Percal	Jason Kidwell
Wm Green	John Myers
Robt Gregg	John W Logan
Thos Shields.	William Coax
	E Spanougle
	John Tenison
	William M English
Thomas Taylor, Jr	Charles Koons
James Ratcliff	Jacob Douglas
B Young	John Carson

P Simpson	James Carson
William Washington	Alfred Bloxham
J. W. Howland	J M Smith
Anthony Rhodes	Moses O B Cawood
John Douglass	Benjamin Magee
Ricd. Cross	John Atwell
R L Degge	William Campbell
Anthony Cahmore	Saml Atwell
Ezra Lurch	Robt Moffett
Gerard Skidmore	Igas. Allen
Thomas Ansley	William Maclish
John Gir	H Wilbar
Frederick Koones	John Gemeny
Hugh Leddy	John Martin
Thomas Lowe	Andrew Bartle

This Memorial was not signed, from the belief that it would be most respectful to the Senate to omit any expression of opinion as to the Construction of the Constitution; and simply to state their conviction of the inexpediency of the measure.

To the Senate of the United States:

The Memorial and Remonstrance of the undersigned Citizens of Washington respectfully represents:

That considering the passage of any law, extending the jurisdiction of Justices of the Peace as obviously opposed by the provisions of the Constitution, or, if constitutional, as conflicting with that policy which would urge the adoption of a pure and safe administration of justice, they have hitherto refrained from expressing their views on the inexpediency of this measure. But having learned with great surprise that a bill for this object has actually passed the House of Representatives, and is now pending in the Senate, they can conceive that they would be wanting in duty to themselves, and a regard for the community of which they are members, should they longer forbear the expression of their earnest desire that this Bill may not become a law.

To a body, so enlightened as the Senate of the United States, they deem it wholly unnecessary to enter into a prolix

enumeration of the various reasons which might be urged against the Bill. They will content themselves by briefly presenting the following, as the most material.

1. That Judicial powers, which Congress are only authorized to vest in Judges to be appointed during good behavior, and whose salaries shall not be diminished during their continuance in Office, are proposed to be conferred on Justices, commissioned only for five years, and who receive no stated compensation; besides on Aldermen ex officio justices, elected by *the people* for two years.

2. That on general principles of policy alone, if the Constitutional objection were entitled to no weight, the powers of Justices of the peace ought not to be increased. Besides the extensive and indefinable powers which they now possess, as conservators of the peace, they, also, exercise jurisdiction in all personal demands to the amount of twenty dollars. This power is greater in proportion to the security against its improper exercise, than that of any functionary known to our Laws. A Justice of the Peace, authorized to decide according to "*Equity and the right of the matter*," has no guide but his conscience, no limitation but his will. So wide and unconfined in his discretion; so little subject to supervision or control, and so liable to abuse, that this petty despotism would be intollerable if not restricted to sums of an inconsiderable amount.

3. That the Jury trial provided in the 15th Section of the bill, as the foundation for the extended jurisdiction over twenty dollars, is not such as the Constitution secures. There can be no *Trial* by Jury without a Court in the unlimited exercise of Judicial power, competent to instruct, and to grant new trials.—But the Jury named in the bill appear to be the sole judges of law and fact. If the justice assume the right to instruct, his instructions are nugatory, because he is not invested with the power of granting new trials. From the judgment entered according to the ver-
dict of the Jury, an appeal may at the option of the Plaintiff or Defendant be carried to the Court, *where the whole proceedings are submitted anew to another Jury.* Whether this proceeding is in conformity to the provision of the Constitution that "no fact tried by a Jury shall be otherwise re-examined in any Court of the United States than according to the rules of the Common Law," is respectfully left to the determination of the Senate. But if the

proceedings were less irregular, what Justice could be expected from a Jury of twelve men, summoned, at the instant, when required, by a Constable, in whose discretion and impartiality the most perfect reliance appea rs to have been placed, since here all the forms usually deemed essential to prevent an improper pannel have been dispensed with, requires no sagacity to determine.

4. That the provision of the Bill which authorize the Magistrate to issue execution, receive returns, and keep the Doquet may lead to corrupt, fraudulent and collusive practices, without the possibility of detection.

5. That the only advantage which the advocate of this Bill can alledge in its favor is fallacious. By its enactment, the costs of litigation will be increased, not diminished. In a trial before the Justice the costs are more than half the amount of those before a Court; and to these, in a majority of cases, may be added the costs attending an appeal.

6. On the whole, whilst this Bill involves at least a doubtful Constitutional question, its passage would they conceive be productive of little good, and most extensive mischief.

Wherefore your memorialists pray that it may be postponed indefinitely.

These papers have been carefully compared with the originals.

The proper names (of signers to petitions), many of which are almost illegible in the originals, have been copied as nearly correct as possible.

The capitalizing, spelling, inserting and punctuation are an *exact* reproduction of the original papers, and are not errors of the typewriter operator.

WM. T. PAGE.

Words underlined in copy of newspaper clipping are in italics.

CERTIFICATE.

Clerk's Office, House of Representatives.
Washington, D. C., September 28, 1898.

I, Walter H. French, File Clerk of the House of Representatives, United States, hereby certify that the foregoing

typewritten pages numbered from 1 to 73, inclusive, contain true and correct copies of the bill No. 39 entitled "A Bill to extend the jurisdiction of Justices of the Peace, in the recovery of debts in the District of Columbia," and the amendments thereto agreed to by the House of Representatives, 17th Congress of the United States, and of the original memorials, petitions, and papers on file in this office in connection with said bill.

WALTER H. FRENCH,
File Clerk, House of Representatives,
United States.

By WM. T. PAGE,
Acting File Clerk.

To the Honorable the Senate of the United States of America:—

The petition and remonstrance of the undersigned citizens of the town of Alexandria in the District of Columbia, most respectfully represents:—That they have very serious and in their opinion solid objections to the passage of the bill depending which is now pending before the Senate for the extension of the jurisdiction of the justices of the peace in the District of Columbia from twenty to fifty dollars.

Your memorialists consider that to give a justice of the peace *exclusive* jurisdiction in this description of cases is not only a violation of the true intent and meaning of the Constitution which requires a trial by jury in all cases over twenty dollars, but it deprives the party of the right to bring his case of fifty dollars before a more competent tribunal. The bill proposes to change a principle of jurisprudence to which the people of Alexandria have been very long attached; which has existed in the State of Virginia since the foundation of the Commonwealth. Your memorialists are unwilling that so important a change should be made in their judicial rights as it were of a sudden.

If the bill is right in the main principle of it, yet it is very defective in the details. It will not expedite the recovery of debts nor diminish the expense, but both delay the recovery and increase the expense.

The first objection to the details of the bill, is that the magistrates jurisdiction is confined to such cases *only* where the creditor resides in the County of which the magistrate is a resident, who is called on to issue his warrant.

Second. The magistrate is bound to render his judgment according to what may be the law *existing* at the time of the trial in the District of Columbia, that is according to the law that is peculiar to this District. He is not left to decide according to the law of *the case*; which case may be governed by the law of the place where the debt was contracted.

Third. There is no authority given to the magistrate to proceed in the trial of the case if the party fails to appear after he has been served with a warrant.

Fourth. If a jury is required and one summoned there is no power to coerce their attendance. The compensation allowed the jury is too inadequate, and there is no provision declaring how the jury is to be paid; nor is there any provision authorizing the magistrate to tax the costs of the trial against the unsuccessful party.

Fifth. The law does not authorize the venire facias to be returned before any other justice of the peace than he who issues it.

Sixth. That section of the law which directs that the execution shall no longer be issued from the office of the Clerk of the Court and that the justices are to retain the papers and issue the executions, will be productive of great public inconvenience, which the act of Congress passed in 1802, 6th volume, page 178, was intended to remove.

Seventh. There is no provision made by the bill for defraying the expense of the room where the juries who may be assembled before the magistrates are to set; and there may be in each county a dozen of these juries in session at once, who could not be accommodated in the court room of the county.

Eighth. Your memorialists consider the trial by jury as given by the bill worse than not having a jury trial at all. They would were it consistent with the Constitution prefer a trial by a single magistrate to one by a jury such as a constable will be able to collect under this bill if it should be passed into a law.

All which your memorialists respectfully submit.

OFFICE OF THE SECRETARY OF THE SENATE
OF THE UNITED STATES.

I certify that the foregoing type-written paper hereto attached is a true and accurate copy of the original memorial on file in this Office with the exception of the names subscribed, which number, in all, forty-nine signers.

BENJ. S. PLATT,
Enrolling Clerk, U. S. Senate.

Sept. 20, 1898.

No. 108.

Brief of Wolf for Oct. Term, 1898.

Filed Oct. 31, 1898.

Office Supreme Court U. S.
FILED
OCT 31 1898
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

No. 108.

THE CAPITAL TRACTION COMPANY,

PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

MOTION TO DISMISS AND BRIEF THEREON.

ALEXANDER WOLF,
Attorney for Charles Hof.

BYRON S. ADAMS, PRINTER.

Supreme Court of the United States.

No. 108.

THE CAPITAL TRACTION COMPANY,

PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

MOTION TO DISMISS AND BRIEF THEREON.

ALEXANDER WOLF,
Attorney for Charles Hof.

SUPREME COURT OF THE UNITED STATES.

THE CAPITAL TRACTION COMPANY,
Plaintiff in Error,
vs.
CHARLES HOF.
} No. 108.

Now comes the defendant in error, Charles Hof, and moves this Honorable Court to dismiss the writ of error in the above-entitled cause, and for reasons therefor, states:

First. That this Court is without jurisdiction to hear the said cause.

Second. That the defendant in error, Charles Hof, is not a proper party to the Record, and the writ of certiorari prayed for by plaintiff in error, in the original proceedings, was not addressed to the said Charles Hof, but to Lewis I. O'Neal, a justice of the peace in and for the District of Columbia, who is not a party to this suit.

ALEXANDER WOLF,
Attorney for Defendant in Error.

To R. ROSS PERRY, ESQ.,
Attorney for Plaintiff in Error.

SIR: Please take notice that on Monday, October 10, 1898, at 12 noon, or as soon thereafter as can be heard, the Court's attention will be called to the above motion.

ALEXANDER WOLF,
Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

THE CAPITAL TRACTION COMPANY,
Plaintiff in Error,
vs.
CHARLES HOF.

Brief on Motion to Dismiss.

First. The right to appeal this cause is founded on the enactment contained in the Act of March 3, 1865, being a right to regulate appeals from the Supreme Court of the District of Columbia and the Supreme Court of the Territories. The first section of the Act states that no appeal or writ of error shall be allowed unless the matter in dispute exclusive of costs shall exceed the sum of five thousand dollars ($5,000). The second section of the Act enacts as follows: That the preceding section shall not apply to any case where is involved the validity of any patent, or copyright, or in which is drawn in question the validity of a Treaty or Statute, or an authority exercised under the United States, but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute. The plaintiff in error has no right of appeal unless the case comes within the second section of the Act, because the amount involved in this suit is less than the jurisdictional amount mentioned in the first section of the Act. This must therefore be a case in which there is drawn in question, the validity of a Statute or an authority exercised under the United States. Upon examination of the petition in this case, it will be seen that the plaintiff in error complains of the construction placed on sections 1009

to 1016 of the Revised Statutes relating to the District of Columbia, and does not complain of the right of Congress to enact such sections. The petition speaks of the so-called jury trial under the said sections as being conducted in a manner unknown to the Common Law, and on that account being illegal and unconstitutional, as contrary to the Seventh Amendment of the Constitution of the United States. Then the petition proceeds to recite why the jury is not a common law jury, and all of the statements which are set out in the fourth paragraph, page 2 of the Record, endeavoring to show why the said jury trial is not a proper jury within the meaning of the Constitution of the United States, and all of the facts therein stated embrace merely the construction placed on said sections 1009 to 1016 and in no way effect, or attempt to effect, the validity of the sections themselves. According to the decision of the Court of Appeals, the majority of the Court held that the construction as set out in the first paragraph of the petition was erroneous, and that the Statute properly construed gave to the man all the rights he was entitled to in the Constitution of the United States. This Court, of itself, has fully considered the question of when the validity of a Statute is called in question, and the Court said, "The validity of a Statute is drawn in question when the power to enact it is fairly open to denial and is denied, but not otherwise."

Baltimore and Potomac Railway Co. *vs.* Hopkins, 131 U. S., 210.
See also United States *vs.* Lynch, 137 U. S., 280.

Where the Court held that a denial of the validity of the Statute must be directly and not incidentally called in question, and the consideration of the construction of the Statute itself does not call in question its validity. Where, it might be asked, in this Record is there any question

affirmed on one side and denied on the other side, calling in question the validity of the sections of the Revised Statutes relating to the District of Columbia? The plaintiff in error says it is aggrieved not because Congress had no right to pass the sections in question, but because merely the courts have construed these sections contrary to law, and deprived it of its constitutional rights. It is therefore submitted that the validity of sections 1009 to 1016 of the Revised Statutes relating to the District of Columbia, is not called in question, and that the Court is without jurisdiction to hear this cause on its merits, and of this opinion was the Court of Appeals of the District of Columbia, when after the filing of briefs and argument by counsel, that Court refused to grant the writ of error.

Second. The writ of certiorari issued in this cause was directed to Lewis I. O'Neal, a justice of the peace in and for the District of Columbia, and the prayer of the petition asked that a certain cause pending before said justice be remanded to the Supreme Court of the District of Columbia for trial, and Charles Hof, the defendant in error, appeared by attorney and moved to quash the writ of certiorari so that the cause of action in which he was a party, could be remanded for trial before said Justice of the Peace. The Supreme Court of the District of Columbia refused to quash the writ of certiorari, and Charles Hof was compelled to appeal the case to the Court of Appeals of the District of Columbia, where the Supreme Court of the District of Columbia was reversed and the case remanded to the Court to quash the petition for the writ of certiorari and remand the case to the justice of the peace for trial. It is submitted that Charles Hof was not a proper party to the suit, but that the justice of the peace, the real defendant in the cause, should have been named as defendant; that to grant a writ of error against Charles Hof was incorrect, for it will

be seen by an examination of the Record that Hof is in no way connected with the petition for a writ of certiorari or any of the processes issued thereon.

It is, therefore, respectfully submitted that this Court should not proceed any further with this case, but that the same should be dismissed. It may be contended by counsel for the plaintiff in error that the questions involved in this case are of so grave a nature that this Court should, if possible, hear and determine them.

In reply thereto the defendant in error informs the Court that there is now pending in this Court two cases, at least, in which the Record attacks the validity of sections 1009 to 1016, and not merely their construction.

Respectfully submitted.

ALEXANDER WOLF,
Attorney for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, *Plaintiff in Error*,

vs.

CHARLES HOF.

Brief on Behalf of the Defendant in Error.

STATEMENT OF CASE.

The defendant in error, Charles Hof, filed a suit for damages in the court of one of the justices of the peace in and for the District of Columbia against the Capital Traction Company. Process was duly issued and served and the defendant (the plaintiff in error) filed a plea of not guilty, upon which issue was joined and the defendant (the plaintiff in error) demanded a jury trial; thereupon, upon petition of the defendant (the plaintiff in error) to the Supreme Court of the District of Columbia, praying that the proceedings be taken to that court for trial, on the grounds that the justice of the peace had no jurisdiction to try the case, and that the trial prayed for by the defendant was not

the jury trial guaranteed by the Constitution of the United States, the writ of certiorari was issued from the Supreme Court of the District of Columbia. Proper return was made on said writ setting out the proceedings had before the magistrate. Thereupon a motion was made to quash the said writ of certiorari, but this motion the court denied and refused to quash the writ, and an order was entered directing that all the proceedings before the justice of the peace should be vacated; but the court also refused to grant the order for removal of the cause for trial in said court, and the case was practically left pending before the justice of the peace, either to be arrested in its progress or to be proceeded with, if proceeded with at all, without the intervention of a jury. The plaintiff (the defendant in error) thereupon appealed to the Court of Appeals of the District of Columbia and that court reversed the decision of the Supreme Court of the District of Columbia, and remanded the cause to the said court, with directions to quash the said writ of certiorari as prayed for by the plaintiff (the defendant in error).

The Capital Traction Company then prayed for a writ of error to this Court, but the Court of Appeals denied said writ. Whereupon they filed a petition to this Court for the allowance of a writ of error and the same was allowed by this Court.

Origin of the Jury System.

Mr. Justice Miller, in his Lectures on Constitutional Law, in speaking of the origin of the jury system, quoting from Forsyth's Trial by Jury, at page 512 of Miller on the Constitution of the United States, says:

> "The distinctive characteristic of the system is this:—That a jury consisted of a body of men taken from the community at large, summoned to find the truth of

disputed facts, who are quite distinct from the Judges or Court. They are to decide upon the effect of the evidence, and thus assist the Court to pronounce a right judgment; but they have nothing to do with the sentence or judgment which follows the verdict. They are not, like the Judges, members of a class, charged with the duty of Judicial inquiry; they are taken from various pursuits to make a special inquiry and return to their ordinary avocations when the labor is over. This distinguishes the system from the Geschwornen-Gerichte of Germany, from the Scandinavian Courts, Norwegian, Swedish and Danish, and from the Anglo-Saxon courts, to each of which speculation has traced it. Even identity in detail does not necessarily imply identity in origin when history shows it to be most improbable. The most remarkable approximation to our own institution seems to have existed at an early period in Russia for the trial of criminal cases."

Mr. Justice Miller, at page 513, then proceeds to say:

"Courts existed in England in the Anglo-Saxon period, presided over by a Reeve or Judge, who had no voice in a decision, and the number of persons who sat as Judges (or Jurors) was frequently twelve, or some multiple of that number; but it was not until the establishment of the assize in the time of Henry II, after these Saxon elements had been continued in force under the Anglo-Normans that the Constitution of the Jury was produced, there the Jury is first found in its distinct form, although the elements of which it was composed were familiar to the jurisdiction of the time. Before that time and in the early Norman reigns it was the practice to decide controversies by appealing to the knowledge of the neighborhood where the parties resided and the land lay. There was no difference in principle between such inquests and the recognition by the knights of assize."

"Passing by the Constitution of Clarendon (1164) the statute of Northampton (1176) and Magna Charta

(1215), we find in a note in Forsyth an account of the earliest record extant of a trial by a regularly constituted *Jurata*, respecting the right to the custody of a Hospital of St. Julian at Southampton. Twenty-four jurors were summoned, twelve acted and gave their verdict for the King. During all this time the jury were both witnesses and Jurors, rendering their verdicts upon their personal knowledge respecting the matter in dispute without hearing witnesses. The change to the present mode was made gradually. By the time of the reign of Edward III, trials by jury in criminal cases were nearly, if not quite the same as the present day. Although the qualification of previous knowledge on the part of Jurors impanelled to try a prisoner had long fallen into desuetude, the fiction was still kept up, by requiring them to be summoned from the hundred, where the crime was alleged to have been committed, until the passing of Stat. 6 Geo., c. 50, by which the Sheriff is now obliged to return for the trial of any issue, whether civil or criminal, twelve good and lawful men of the body of his county, qualified according to law. The jury system was brought by emigrants to this country, to Canada, to Australia, to South Africa, and wherever colonies have been planted by British emigrants. It extended to Scotland but there the Scottish system of law, derived from the civil law, authorized the finding in criminal cases of a verdict of 'Not proven' when the jury was not prepared to find 'Guilty' or 'not guilty.'

"The jury was introduced into France in 1789 in criminal cases but not in civil cases; in Belgium in 1830; in Sardonia, 1850, from whence it has extended into Italy and Germany."

For a further history of the trial by jury, reference is made to the Encylopædia Britannica (9 Ed.), Vol. 13, p. 783, Tit. Jury.

A Brief History of the Office of and the Acts of Congress Affecting the Courts of Justices of the Peace.

The office of justice of the peace is of very ancient origin. They first received the appellation by which they are now known from the Statute 34, Edward 3 (1 Bl. Com., 353–4). At common law their jurisdiction was very limited, and extended only to petty criminal offenses. In this District justices of the peace have no criminal jurisdiction now, their jurisdiction being confined exclusively to civil cases. At common law the nearest approach to the courts of this District were the Courts baron, County Courts, and the Hundred Courts, etc., of England. By the Maryland Act of December 29, 1791, Chap. 68, Sec. 1, justices of the peace in Maryland were given authority to hold pleas in civil cases where the debt or damage did not exceed the sum of ten pounds in money or one thousand pounds of tobacco. By the fourth section of that act the appeal to the county court was provided, and the right was given to either party to demand a trial by jury on such appeal. This act was in force in Maryland when the District formed part of that State and when the Act of February 27, 1801, was passed. When the courts assumed jurisdiction over the District of Columbia by authority of said act of February 27, 1801 (2 Stat., 103), justices of the peace were given cognizance of personal demands to the extent of $20 of value, but there was no provision for a trial by jury but there was provision for an appeal.

By the Act of March 1, 1823 (3 Stat., 743), justices of the peace were given exclusive jurisdiction of all cases where the real debt and damage did not exceed the sum of $50. In every action to be brought by virtue of this act where the sum in dispute shall exceed $20, the act provided that "it shall be lawful for either of the parties to the suit, after issue joined and before the justice shall proceed

to inquire into the merits of the case, to demand of said justice that such action be tried by a jury, and upon said demand said justice is hereby required to issue a venire under his hand and seal, directed to any constable of the county where said case is to be brought, commanding him to summon twelve jurors and be and appear before the justice issuing such venire, at such time and place as shall be therein expressed. And the *jurors thus summoned shall possess the qualifications and be subject to the exceptions provided for jurors by law.*" The act then further provides "That if any of the persons so summoned and returned as jurors shall not appear, or be challenged and set aside, the justice before whom said cause is to be tried shall direct the constable to summon and return forthwith, talesmen, so as to make up the number of twelve, after all causes of challenge have been disposed of by the justice, said talesmen to be subject to the same exceptions as the jurors. And the said twelve persons shall be the jury who shall try the case, each of whom shall be sworn by the justice well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence. And the said jury being sworn shall sit together and hear the proofs and allegations of the parties in public, and when the same is gone through with the justice shall administer to the constable the following oath, viz: You do swear that you will keep this jury together in some private room without meat or drink except water; that you will not suffer any person to speak to them nor will you speak to them yourself unless by order of the justice until they have agreed on their verdict. And when the jurors have agreed on their verdict they shall deliver same publicly to the justice, who is hereby required to give judgment thereupon forthwith, and the said justice is hereby authorized to issue execution on

said judgment in the manner and under the limitations hereinbefore directed."

Section 17 of said act provides for the amount of fees that shall be allowed the justice and the amount of fees to be allowed to the jurors and to the constable for summoning the jury.

By the act of February 22, 1867 (14 Stat., 401), the jurisdiction of justices of the peace was increased to $100. The Supreme Court of the District of Columbia having concurrent jurisdiction of all claims and demands between $50 and $100. The provisions of the act of March 1, 1823, in reference to the appeal and trial by jury remained unchanged.

By the act of February 19, 1895 (28 Stat., 668), justices of the peace were given exclusive original jurisdiction in all cases where the amount claimed to be due or the value of the property sought to be recovered did not exceed $100, and original and concurrent jurisdiction with the Supreme Court of the District of Columbia of all amounts between $100 and $300. This act further provided "That no appeal shall be allowed from the judgment of the justices of the peace in any common law action unless the matter in demand in such action, or pleaded in set off thereof, shall exceed the sum of $5, nor unless the appellant, with sufficient surety, approved by the justice, enters into an undertaking to pay and satisfy whatever final damage may be recovered in the appellate court."

From all of which it is apparent that the matter of trial by jury in causes authorized by statute to be instituted before the justices of the peace, and the manner of appeal from the judgment of such justice remains substantially as provided in the act of March 1, 1823, with only the superadded requirement of a bond undertaking in the case of an appeal.

It should also be noticed that both by the act of February 22, 1867, and the act of February 19, 1895, power was

given to the Supreme Court of the District of Columbia to make rules and regulations for the conduct of causes before justices of the peace. The language of the act of 1867 is as follows: "That the court shall make and establish rules of practice and prepare and publish forms of pleadings for bringing all forms of actions and the trial thereof, before justices of the peace." The act of 1895 states as follows: "That the court shall make and establish such different rules of practice and principal forms of practice and pleading rendered necessary by the act and the same from time to time to be altered and amended as might be deemed advisable."

So much of the act of 1823 providing for a trial by jury before a justice of the peace and for an appeal from the judgment, as has been incorporated into the Revised Statutes for the District of Columbia, modified by subsequent legislation, is as follows:

Section 1009: "In every action where the sum demanded shall exceed $20.00, it shall be lawful for either of the parties to the suit after issue joined and before the justice shall proceed to inquire into the merits of the case, to demand of the justice that said action be tried by a jury."

Section 1010: "Upon such demand the justice shall issue a venire under his hand and seal, directed to any constable of the District, commanding him to summon twelve jurors to be and appear before the justice issuing such venire, at such time and place as shall be therein expressed."

Section 1012: "If any of the persons summoned and returned as jurors shall not appear or shall be challenged and set aside, the justice before the case is to be tried shall direct the constable to summon and return forthwith, talesmen, so as to make up the number of twelve, after all the causes of challenge shall have been disposed of by the justice."

Section 1011 provides that the jurors shall possess the

qualifications and be subject to the exceptions provided by law.

Section 1013 provides that "The twelve persons shall be the jury which shall try the case, each of whom shall be sworn by the justice well and truly to try the matter of difference between the parties and a true verdict to give according to the evidence."

Section 1014: "The jury being sworn, shall sit together and hear the proofs and allegations of the parties, in public."

Section 1015 provides for an oath to the constable to keep the jury together, etc.

Section 1016: "When the jurors have agreed upon their verdict they shall deliver the same publicly to the justice."

Section 1017: "The justice shall give judgment thereon forthwith, and may issue execution accordingly."

The Court of Appeals of the District of Columbia in the case at bar (10 Appeal Cases, D. C., 225) states in considering these sections: "The order of arrangement in the revision is somewhat different from that in the original act, a circumstance which may not be without some weight in our consideration, but is by no means of controlling importance."

The court in this case, in discussing the act of March 1st, 1823, said, "Very soon after the passage of this act, in fact in the very same year, its scope and construction became the subject of judicial investigations, and five cases are found in the old Circuit Court reports and one case in the Supreme Court reports, where the effect of the statute was sought to be ascertained." The court referred to the following cases:

Sherbourne *vs.* Semmes, 2 Cranch, C. C., 446.
Davidson *vs.* Burr, 2 Cranch, C. C., 515.
Maddox *vs.* Stewart, 2 Cranch, C. C., 523.
Denny *vs.* Queen, 3 Cranch, C. C., 217.
Smith *vs.* Chase, 3 Cranch, C. C., 348.
Fitzgerald *vs.* Leisman, 3 McArthur, 6.

ARGUMENT.

1. *It was the legislative intention of Congress in the act of March 1, 1823 (3 Stat., 743), extending the jurisdiction of justices of the peace in the District of Columbia, to provide for a common law jury in the trial of such cases, and the jury provided by that act is such common law jury.*

The plaintiff in error contends that under the seventh amendment to the Constitution of the United States, justices of the peace in the District of Columbia are not constitutionally empowered to act judicially in cases involving more than $20.00 of value. This contention is an effort on the part of the plaintiff in error to overthrow adjudications which have remained unquestioned in this District since 1823, and were unquestioned until the opinions of justices of the Supreme Court of the District of Columbia in 24 Wash. Law Rep., 406, and in 24 Wash. Law Rep., 646, were handed down.

The seventh amendment to the Constitution of the United States is as follows:

> *"In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than by the common law."*

Marshall, C. J., in the case of Gibbons *vs.* Ogden, in 9 Wheaton, 188, said: "The enlightened patriots who framed our Constitution and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said." Allen, J., in People *vs.* N. Y. Cen. R. R. Co., 27 N. Y., 487, said: "The written Constitution framed by men chosen for the work by reason of their peculiar fitness, and adopted by the people

upon mature deliberation, implies a high degree of deliberation, and the care of expression proportioned to the importance of the transaction, presumes that the words were used with the greatest possible discrimination." Bronson, J., in The People *vs.* Purdy, 2 Hill (N. Y.), said: "We are not at liberty to presume that the framers of the Constitution and the people who adopted it did not understand the force of their language." "That which the words declare is the meaning of the instrument." (Newell *vs.* The People, 7 N. Y., 9.) In commenting on this rule, Johnson, J., in the case just cited, further says: "This is true of every instrument, but when we are speaking of the most solemn and deliberate of human writings, those which ordain the fundamental laws of States, the rule rises to a very high degree of significance."

In the case of Prigg *vs.* The Commonwealth of Pennsylvania, 16 Peters, Mr. Justice Story, in interpreting the 25th section of the Judicial Act of 1879, Chap. 20, for the purpose of reviewing the judgment of the Supreme Court of Pennsylvania, in a case involving the construction of the Constitution and laws of the United States, at page 612, said:

> "How, then, are we to interpret the language of the acts? The true answer is, in such a manner as that the words shall not fail completely to effectuate the whole object of it. If by one mode of interpretation the right becomes shadowy, unsubstantial and without any immediate power, and by another mode it would attain its just end and secure its manifest purpose, it would seem upon principles of reasoning, absolutely irresistible that the latter ought to prevail. No court of justice can be authorized so to construe any such acts or the Constitution as to defeat its obvious ends, when another construction equally accordant with the words and sense thereof, will protect them."

The seventh amendment was adopted when all the proceedings of the courts of the United States and all the courts of the States were under the common law. It was intended to protect the rights of citizens proceeding under the common law, and **it provided that decisions of juries should not be set aside except according to the common law.**

There are two separate and distinct clauses to the seventh amendment to the Constitution. The first is, "In suits at common law where the value in controversy shall exceed $20, the right of trial by a jury shall be preserved;" and the second is—"No fact tried by a jury shall be re-examined in courts of the United States, other than by the common law." It does not follow that no fact tried by a jury mentioned in the second clause is related to the trial by jury, as provided for in the previous portion. If the two clauses must necessarily be construed together, and regarded as inseparable, they might then be construed as one clause. This, however, is not the view taken by the Supreme Court of the United States in the case of Justices *vs.* Murray, 9 Wallace, 277. The court in its decision quotes Mr. Story, J., in Parsons *vs.* Bedford, *et al.*, 3 Peters, 447, 448, who said in his opinion referring to this part of the amendment, "*It should be read as a substantial and independent clause, and it is a prohibition to the courts of the United States to re-examine any facts tried by a jury, in any other manner.*" A history of the amendment confirms this view.

Debates in Congress by Gales and Seaton, Vol. I, pp. 452, 458, 784.

If the contention of the plaintiff in error that the justices of the peace under said amendment are not constitutionally empowered to act judicially in cases involving more than $20, is correct, then it must follow that justices of the peace

have no jurisdiction to try or power to act in cases where the amount in dispute exceeds $20. It further follows that where a citizen of this District has a demand against his neighbor in excess of the sum of $20, and less than $100, there is no forum open to him in which he can obtain redress.

Mr. Justice Morris, speaking on the subject, in the case at bar (10 Appeal Cases, D. C., at page 242), said:

> "During the period of 70 years, for which the act of 1823 has been in force, either as originally enacted or as incorporated into the Revised Statutes, the course of procedure thereunder has been as established by the decisions of the old Circuit Court of the District of Columbia, to which reference has been made. Appeals have been entertained only from the judgments of justices of the peace when they have acted themselves as judges both of law and of fact without a jury; no appeal has ever been entertained from judgments of the justices rendered upon the verdict of a jury. To overthrow this practice of seventy years, and the construction of the statute upon which it is based, the error of that construction should be made very plainly to appear. In order to show that error and to sustain the right of appeal from the judgments of the justices of the peace in all cases, whether rendered upon verdict of a jury or otherwise, a construction must be put upon the statute which would introduce a monstrosity into our law, a jury which is no jury, but a farce and a fraud, a delusion and a snare, a stone given when bread was asked for. This we cannot regard as the legitimate construction of the act. It would certainly be an utter nullification of its scope and purpose, and of the intention of Congress in its enactment; and, as we think has been shown, no such construction is demanded in order to harmonize the act with the Constitution. On the contrary, we regard such construction as antagonistic both to the letter and spirit of the Constitution."

The Court in referring to this question as affecting the title to property in the District of Columbia, said, on page 245:

> "It would not only affect the title to numerous lots of ground in the District of Columbia, which have been transferred upon writs of execution, but would likewise paralyze the administration of justice in this District in cases involving amounts of more than $20 and not more than $100 of value, for under such a conclusion there can be no tribunal in the District of Columbia competent to take cognizance of such causes. It behooves us to pause before we sanction such a result. We do not find it necessary to adopt the course of reasoning that would necessarily in our opinion lead to it. *Undoubtedly and beyond question, in framing the act of March 1, 1823, Congress had in mind the seventh amendment to the Constitution and it was the intention of that body to provide a common law jury for the trial of issues before Justices of the Peace.*"

Mr. Justice Morris, in the case above cited, in referring to the act of March 1, 1823, said:

> "The statute belongs to the class in favor of which every intendment is to be made. It is not a statute in derogation of the common law and common rights. On the contrary it is a statute intended to extend the domain of the common law and to facilitate the administration of justice. * * * It has evidently been the policy of Congress to enlarge and extend the civil jurisdiction of the justices and it is the duty of the courts in the construction of the statutes, as long as that policy lasts, to seek to give it effect and not to nullify it."

On page 234 of the case above cited, the Court further said:

> "The court of justice of the peace for the cognizance of petty cases, it must be remembered, was part of our judicial system at the time of the adoption of the

Federal Constitution, and had been for nearly two centuries or upwards. The petty courts of England to which it corresponded had been in existence from time immemorial. This court, although limited in the extent of its jurisdiction, was an important factor in the administration of justice; and the Constitution of the United States did not fail to take notice of it; for the reservation of the right of trial by jury in all cases involving more than $20 of value, it evidently intended to leave undisturbed and unaffected by its provisions the petty civil jurisdiction exercised at the time by the justices of the peace. And when the Congress of the United States, for the purposes indicated in the eighth section in the first article of the Constitution, assumed jurisdiction of the District of Columbia, it took it, and it was evidently the intention of the Constitution that it should take it with its then existing judicial system, subject to such modification thereof as might thereafter be made. The court of the justice of the peace within its narrow and restricted limits was as much a part of that judicial system as was the court of general jurisdiction. It was not, of course, one of the courts of the United States to which any part of the judicial power vested in the Federal Government by the third article of the Constitution, could be given; for that article contemplated only the courts of general jurisdiction. But it was a court which, under its general power of legislation over the District of Columbia, the Congress might well adopt or establish. Its establishment was within the usual scope of such legislative power."

"Such being the power of Congress, and it being the plain, unmistakable purpose of that body to provide a common law jury for the court of justice of the peace in cases involving more than $20 of value, the question recurs 'Whether the terms of the act of March 1, 1823, were sufficient to effect the purpose?' * * * The majority of the court in the case at bar are of the opinion that the act of Congress was sufficient to effect such purpose, and that there is nothing in the act to warrant the deduction that a justice of the peace may not in-

> struct the jury in questions of law arising in the case, and that he may not control the matter of the introduction of evidence, or that he may not even set aside the verdict of the jury and grant a new trial. The court said: 'Even if the act of Congress were entirely silent on the subject, the reasonable inference would be that, when the legislature provided the court of the justice of the peace court with a jury, it intended *that such jury should act in accordance with the common law, and should serve precisely the same purpose which it serves in the common law.*' "

When Congress says, as it does in said act of 1823, that in special cases there must be trial by jury, it must be taken to mean what it says, and it can only mean such a jury as is required by the seventh amendment to the Constitution. This not only appears from the act itself, but from the debates in the Senate preceding the passage of the act, and from these debates the same inference is to be drawn. In these debates it appears that among the amendments offered, was one by Mr. Southard, which proposes to strike out all, the bill allowing a jury trial before the justice of the peace and substituting "That if the party to the debt did not waive the jury trial then the case should be referred to the court of the county." (40 Congressional Rec., 270.)

Section 1011 of the Revised Statutes for the District of Columbia provides "That the juries (meaning the jury in courts of justice of the peace) shall possess the same qualifications and be subject to the exceptions provided for juries by the law."

In the case of Hendley *vs.* Clark, 8 App. D. C., 165, the court said—

> "Congress has conferred jurisdiction upon justices of the peace in most ample terms, and we are bound to assume that the jurisdiction was intended to be exercised. * * * However, should undesirable complica-

tions arise, it is a matter for the legislature, and possibly for the Supreme Court of the District of Columbia, to regulate in granting it the power to carry the act into effect."

The Statute plainly contemplates that in the conduct of the trial by jury, the justice of the peace must exercise judicial functions; he undoubtedly exercises judicial functions in the handling of the jury, and in all cases of challenge the justice disposes of same, and he is required to swear the jury who are to try the matter in dispute and render their true verdict according to the evidence. That a magistrate can exercise judicial functions in disposing of questions of law touching the capacity of the jury, is settled, and why can he not exercise judicial functions in passing upon questions of law arising during the trial, when the act contains no restrictions upon the exercise of such functions?

Plainly under the Statute it is not for the jury, but for the justice, to decide upon the introduction of testimony in the trial, or necessarily to rule upon the competency of the testimony which is offered to be adduced. This is the main function of the judge or presiding officer in the trial by jury. Instruction is only given upon the law when asked for or deemed proper by such presiding officer himself, to be given, that Congress has not provided some proper and satisfactory method by which the questions of law passed upon in the magistrate's trial, either by Bill of Exceptions, or otherwise, can be reviewed in an appellate court, is no argument against the inferior jurisdiction of the tribunal. This is a defect which the legislature and not the courts must remedy.

The mere fact that the law requires the justice to enter a judgment on the verdict forthwith, does not necessarily prevent him from granting a new trial, for the word "forthwith" only directs the entering of the judgment immediately with-

out waiting four days, but would his doing so affect the trial as a common law trial? The motions that lie between the verdict and the judgment are not essentially a part of the common law trial, and a motion in arrest of judgment could not be had because there were no pleadings, and even if there were it would not abolish the right of the party to a motion in arrest of judgment, and it in no way affects the right of trial by jury; neither does the fact that the jury shall be the sole judges of the facts, and certainly if the justice has the right to instruct the jury on the law, his decision on the facts can in no way deprive the litigant of his trial by jury.

In Maryland the legislature has abolished motions in arrest of judgment in criminal cases, and has even gone so far as to allow the jury to be both judges of law and of fact.

The justice certainly has the right to preside at the trial in the capacity of an ordinary judge.

> "When the justice presides over a jury trial, the same rules of propriety should control his conduct as are presumed to govern that of judges of courts of record. The justice should preside over the trial with becoming dignity; his province is clearly defined. It is his duty to administer the oaths to the witnesses and to pass upon the competency and relevancy of the testimony offered."
>
> Amer. and Eng. Enc. of Law, Vol. 12, 1st Ed., p. 464.

In the case of Adams *et al. vs.* Clark, 64 Ga., 648, it was held—

> "That a justice of the peace on a trial before a jury in his court, may or may not give the law, in his charge to the jury, at his option. If he does so and charges the law correctly, it will not be a ground for a new trial."

"A justice of the peace may instruct the jury upon the questions of law, and if he instructs them erroneously, the judgment will be reversed."

Trustees of Village of Penyan *vs.* Thorn, 6 Hill (N. Y.), 626.

DeLancey *vs.* Nagle, 16 Barber (N. Y.), 96.

When Congress provided for a trial by jury in the Police Court of the District of Columbia, it equally failed to provide for any express power in the justice of that court to act in such trial.

See act of July 3, 1892 (27 Stat., 261).

See act of March 3, 1891 (26 Stat., 248).

It is the practice of the justices of the Police Court of the District of Columbia, and properly so, to control the admission of evidence, and to instruct their juries upon the law, and also to award new trials.

The court, in the case at bar, page 237, said:

"It can scarcely be controverted with reason that the act of Congress of March 1, 1823, provided for the court of justice of the peace, a common law jury, if it was competent for it under the Constitution so to provide; and it is in this question of constitutional power of Congress so to provide, that the gist of the controversy lies. The question then, is narrowed down to the inquiry: 'Whether in legislating for the District of Columbia, it was competent for Congress of the United States to provide for the empannelling of a common law jury in the courts of justices of the peace for the determination of questions of fact arising in suits instituted before such justices?'"

The court then asks this question:

"Why is it not competent for Congress so to provide? For the difficulty would seem to be not to find the requisite authority in the courts, but to find the expressed investing of them with such authority."

Congress has been given exclusive jurisdiction over the District of Columbia, and it has been provided with all proper legislation not prohibited by the Constitution and not inconsistent with our public institutions.

Stoutenburg *vs.* Hennick, 129 U. S., 141.
Loughboro *vs.* Blake, 5 Wheaton, 317.

The right of appeal, which has been provided by Section 1009 of the Revised Statutes for the District of Columbia from the judgment of justices of the peace, to the Supreme Court of the District of Columbia, not considered with regard to the context, might be presumed to authorize appeals from judgments of justices in controversies involving more than $5 of value, whether rendered upon a hearing by a jury or otherwise, and the constitutional inhibition be considered to extend to only those cases in which Congress has given the right; those cases could be only such as are tried by the justice without a jury. There is no absolute right of appeal; there was none at common law. Even the Bill of Exceptions, by which means a cause at common law may be reviewed in the appellate court, is a creation of statute law.

"The Supreme Court of the United States has repeatedly held that it can exercise only such appellate power as is given it by Congress."

B. & O. R. R. Co. *vs.* Grant, 98 U. S., 398.
McKane *vs.* Durston, 153 U. S., 684–7.
Andrews *vs.* Swartz, 156 U. S., 272–5.

"The so-called right of appeal is not an absolute, infallible right, of parties, but it may be given, regulated or taken away by act of Congress without violation of any inhibited right."

10 Appeal Cases D. C., 244.

As the Court of Appeals in this case said :

> " It seems that there is no constitutional inhibition that would prevent Congress from providing a common law jury for the courts of justice of the peace, and in as much as it is clear that it was plainly the legislative intention in the act of Congress of 1823 to provide such, and as the terms in said act were clearly used for that purpose, the conclusion would necessarily follow that the act was the rightful constitutional exercise of legislative authority, and *the jury provided by that act is such a jury as was contemplated by the first clause of the seventh amendment to the Constitution.*"

2. *Justices of the peace under the Act of Congress of March 1, 1823, and the subsequent acts of Congress enlarging the jurisdiction of justices of the peace, have full power to try with a jury, such cases involving more than $20.00 of value, and the said trial does not conflict with the seventh amendment of the Constitution.*

If the jury trial before justices of the peace is not a common law jury trial, then the defendant has a right of appeal, and he can have his constitutional right of trial by jury in the Supreme Court of the District of Columbia, which is a sufficient constitutional guarantee.

Congress has the right to establish inferior tribunals without a common law jury, and no one can take exception thereto on the ground that he is deprived of his constitutional right of trial by jury, provided an appeal will lie from such tribunal to a court where he can obtain his constitutional jury trial.

Stewart *vs.* the Mayor and City Council of Baltimore, 7th Md., p. 500.
Morford *vs.* Morford, 8 Yerger, 444.
McDonald *vs.* Schell, 6 Scargt & Rawle, 240.

Mr. Chief Justice Alvey, in his dissenting opinion in the case at bar, says:

> "It has been held in many cases, as shown by Judge Cooley, that it is competent to deny the parties the right of trial by jury in the court of first instance, provided the right is allowed on appeal. It is undoubtedly competent, says the author, to create new tribunals without common law powers and to authorize them to proceed without a jury; but a change in the forms of action will not authorize submitting common law rights to tribunals in which no jury is allowed."
>
> Cooley—Constitutional Limitations, 6 Ed., 505.
>
> 32 Ohio State, 275.

The court then proceeds to say:

> "The general principles have been modified as applied to criminal cases, upon the principle that the accused should not be first convicted by a court, and then be subjected to another trial by a jury to which he is constitutionally entitled. It is therefore to be held that the prisoner has a right to a trial by a jury from the first moment, in whatever court he is put on trial for the offense charged."

The court then proceeded to say:

> "It is manifest, however, that there is a marked distinction between the case of the criminal charge involving a life or liberty of the party accused, and that of a proceeding for the recovery of some debt or demand as between party and party. The case of Callan *vs.* Wilson (127 U. S., 540), was decided on the construction of the second section of the third Article of the Constitution, which declares that the trial of all crimes, except in the case of impeachment shall be by a jury, and on the construction of the sixth amendment to the Constitution, which declares 'That in all criminal prosecutions, the accused shall enjoy the right

to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed,' but the right of trial by jury secured by the 7th amendment to the Constitution applies only to civil cases, in which lawful rights are to be ascertained and determined, as distinguished from the rights in criminal and equitable cases."

And the court further said on page 252 of said case before cited:

"In view of the exclusive legislative power of Congress over this district it is difficult to conceive how the question could be raised as to the want of power in Congress to provide for a jury as an aid to the exercise of the jurisdiction of justices of the peace. But whether such jury is a common law jury and therefore within the meaning and contemplation of the seventh amendment to the Constitution of the United States, or a jury purely a statutory creation in analogy to the common law jury, is another and a different question."

"Whenever facts are to be found in any proceeding in which a jury is not required by the common law, a jury of any number of men may be authorized in the discretion of the legislature. The justice courts, not being courts of record, are not within the Constitutional provision just mentioned. Juries do not form a part of the machinery of such tribunals, by the common law, and so long as an appeal is provided for, to the common law courts from their determination, no statutory objection can be raised as to whether the facts are found by a justice or by the aid of a jury of any number of men."

Thompson and Merrian on Juries, Sec. 10.

Counsel for plaintiff in error appears to admit that causes can be tried before a justice of the peace with the aid of a jury, provided there is an appeal to the Supreme Court of

the District of Columbia, for he sets forth as his fifth assignment of error the following:

"The Court of Appeals erred in holding that there can be no appeal to the Supreme Court of the District of Columbia from the judgment of a justice of the peace in said district, in a case tried by jury before said justice."

(Page 3 of Brief for Plaintiff in Error.)

Mr. Chief Justice Alvey, of the Court of Appeals of the District of Columbia, held that an appeal would lie in this case, and he held that the order of the Court below overruling motion to quash writ of certiorari and quashing part of proceedings before the justice of the peace should be reversed and the petition for the writ of certiorari be dismissed for the reason that an appeal from the judgment of the justice of the peace would furnish to the defendant the appropriate remedy for any grievance it might have by the judgment of the justice.

Mr. Chief Justice Alvey, in his dissenting opinion in the case at bar, at page 258, says:

> "The constitutionality of the act has never been seriously challenged until by decision of the court below recently made, the act has been declared unconstitutional and void. This carries with it many serious consequences that should be avoided if possible. The act has been in force for three-quarters of a century, and during that time a great many rights have arisen which are founded on the validity of proceedings had under that act. To have declared the act to have been unconstitutional and void from the commencement, with the consequence of the invalidity of all proceedings thereunder, would likely have caused great trouble and confusion. With all due respect to the opinions of others, however, *I am of the opinion that the act is con-*

stitutional and that the right to a trial by jury as contemplated by the Constitution, and according to the principles of common law, is amply secure to either party by right of appeal to the Supreme Court of the District of Columbia."

The questions herein involved have again been passed upon by the Court of Appeals of the District of Columbia, in 11 Appeal D. C., 57, on April 27, 1897, in the case of the Metropolitan Railroad Company, Appellant, *vs.* Samuel R. Church, a Justice of the Peace in and for the District of Columbia. Mr. Justice Morris, in rendering the opinion of the court, said:

"The facts and circumstances of the case do not differ substantially from those of the case of Hof *vs.* The Capital Traction Company, 10 App. D. C., 205. The question perhaps, is here more distinctly and specifically raised of the unconstitutionality of the act of Congress of March 1, 1823 (3 Stat., 743), so far as it authorizes justices of the peace to summon juries in cases pending before them, as well as the unconstitutionality in the same regard of all the subsequent legislation of Congress enlarging the jurisdiction of justices of the peace, but there is otherwise no difference.

"*We sustained in the case of Hof vs. The Capital Traction Company the constitutionality of the enactments in question, and we adhere to that decision.*"

The history of legislation in the States shows a constant tendency to enlarge the civil jurisdiction of justice's courts. This has been done in all the States except New Hampshire and Maine. (See Appendix.) Our own parent State,

Maryland, after retaining the limit for many years at one hundred dollars by act of Legislature of 1898, raised the jurisdiction to two hundred dollars for the city of Baltimore.

In all these States the highest courts have met the same constitutional difficulties which have been raised here and have overcome them.

Respectfully submitted,

ALEXANDER WOLF,

Attorney for Defendant in Error.

APPENDIX.

Civil Jurisdiction of Justices of the Peace in the States of the Union.

Alabama		$100.00
Arizona	up to	300.00
Arkansas	" "	300.00
California	" "	300.00
Colorado	" "	300.00
Connecticut	" "	100.00
Delaware	" "	200.00
Florida	" "	100.00
Georgia	" "	100.00
Idaho	" "	300.00
Illinois	" "	200.00
Indiana	" "	200.00
Iowa	" "	100.00
	(By consent of parties $300.00.)	
Kansas	up to	300.00
Kentucky	" "	100.00
Louisiana	" "	100.00
Maine		20.00
Maryland		100.00
	(By act of the Legislature of 1898, for the city of Baltimore $200.00.)	
Massachusetts (called "Trial Justices")	up to	300.00
Michigan	up to	300.00
Minnesota		100.00
Mississippi	up to	200.00
Missouri	" "	250.00
Montana	" "	300.00
Nebraska	" "	200.00
Nevada	" "	300.00
New Hampshire	" "	13.33
New Jersey	" "	200.00
New Mexico	" "	100.00
New York	" "	200.00
	(And by confession $500.00.)	

North Carolina	up to	$200.00
North Dakota	" "	200.00
Ohio	" "	300.00
Oklahoma	" "	100.00
Oregon	" "	250.00
Pennsylvania	" "	300.00
Rhode Island (called District Court Justices)	up to	300.00
South Carolina (called Magistrates)	up to	100.00
South Dakota	up to	100.00
Tennessee	" "	500.00
Texas	" "	300.00
Utah	" "	300.00
Vermont	" "	200.00
Virginia		100.00
Washington State	up to	100.00
West Virginia	" "	300.00
Wisconsin	" "	200.00
Wyoming	" "	200.00

(Hubbell's Legal Directory, Edition, 1898.)

Additional Rules of Practice

BEFORE

JUSTICES OF THE PEACE

IN THE

DISTRICT OF COLUMBIA

ESTABLISHED AND PRESCRIBED BY

The Supreme Court of the District of Columbia

Promulgated July 31, 1895

WASHINGTON
SIMMS & LEWIS, PRINTERS
1899

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Sitting in General Term-

October 25th, 1872.

Proceedings before Justices of the Peace, Rule as to New Trials.

Ordered that any Justice of the Peace may, in his discretion, within four days after judgment, open the same and grant a new trial.

D. K. CARTTER,

Chief Justice.

2nd Minutes General Term, Page 101.

A TRUE COPY.
TEST:
J. R. Young, Clerk
By R. J. [illegible]

RULES OF PRACTICE BEFORE JUSTICES OF THE PEACE.

In compliance with section 29 of the act of Congress approved the 19th day of February, 1895, the following additional rules of practice and forms of process and proceeding are hereby made, established, and prescribed by the supreme court of the District of Columbia to be observed in civil suits or actions before justices of the peace:

UNDERTAKING ON APPEAL.

1. The following is adopted in lieu of rule 92 of the common law rules relating to appeals from judgments of justices of the peace:

No appeal, except in cases where the United States or the District of Columbia is appellant, shall be allowed from the judgment, unless the appellant, with sufficient surety or sureties approved by the justice, shall enter into an undertaking to the following effect:

A—— B——
v.
C —— D——.

Before —— ——, one of the justices of the peace for the District of Columbia.

The —— desiring to appeal from the judgment of the justice of the peace rendered against —— in the above-entitled cause, on the —— day of ——, 189—, to the supreme court of the District of Columbia, he and —— ——, his surety or sureties, hereby appearing and submitting to the jurisdiction of the said supreme court, undertake jointly and severally to pay and satisfy whatever final judgment may be recovered against them in the said court, which judgment may be entered against them jointly or either of them separately in this case.

Given under our hands this —— day of ——, 189—.

—— ——.
—— ——.

ATTACHMENT BEFORE JUDGMENT.

UNDERTAKING.

2. The plaintiff's undertaking shall be as follows in form or effect:

IN JUSTICE'S COURT OF THE DISTRICT OF COLUMBIA, —— DAY OF ——, A. D. 18—.

A. B., PLAINTIFF,
v.
C. D., DEFENDANT. } At law, No. —.

The plaintiff, and —— ——, his surety, hereby appearing and submitting

to the jurisdiction of the court, undertake for themselves and each of them, their and each of their heirs, executors, and administrators, to make good all costs and damages which the defendant may sustain by reason of the wrongful suing out of the attachment to be issued in this cause against said defendant. And if said attachment shall be dissolved they consent that the said damages may be ascertained and judgment given therefor in this case against either or all of the persons whose names are signed hereto by the justice trying the case, or by the supreme court of the District of Columbia in case of an appeal.

Witness our hands and seals this —— day of ——, A. D. 18—.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Taken and acknowledged before me, and by me approved this —— day of ——, A. D. 18—.

—— ——, *J. P.* [SEAL.]

3. When the affidavits and undertaking required by law have been filed, the justice of the peace shall issue the writ of attachment and garnishment in form or effect as follows:

FORM OF WRIT OF ATTACHMENT.

IN JUSTICE'S COURT OF THE DISTRICT OF COLUMBIA.

A. B., PLAINTIFF, }
v. } At law, No. —.
C. D., DEFENDANT. }

The President of the United States to —— ——, or to any qualified constable of the District of Columbia, greeting.

You are hereby commanded to attach, seize, and take into your custody the defendant lands, tenements, goods, chattels, and credits, or his interest therein, which shall be found in this District, to the value of —— dollars and —— cents, with interest, the amount of the plaintiff demand against the defendant, as shown by his affidavit, duly supported, and the further sum of —— dollars and —— cents for the costs and charges which may accrue in this case, and the same so attached safely keep, subject to the orders of this court; and should you attach the defendant goods, chattels, or credits in the possession of any other person, you shall summon such person to appear before this court within ten days, exclusive of Sundays and legal holidays, after the service of this writ upon such person, to show cause why said goods, chattels, and credits, so attached, should not be condemned and execution thereof made, by delivering to him a copy of this writ and interrogatories hereto annexed.

Given under my hand and seal this —— day of ——, A. D. 18—.

[SEAL.] —— ——, *J. P.*

INTERROGATORIES TO GARNISHEE.

The plaintiff may exhibit the following

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE.

1. Whether he is, or was at the time of the garnishment, indebted to the defendant? If so, how, and in what amount?

2. Whether he has now, or had at the time of serving the notice, or has had at any time between the date of service and the time of answering, any goods, chattels, or credits of the defendant?

And such other interrogatories as the plaintiff may think proper to propound within the limits of this rule.

UNDERTAKING FOR DISCHARGE OF PROPERTY.

4. If the defendant shall apply to have the property or credits attached discharged from the lien of the attachment he shall give an undertaking in form or effect as follows:

IN JUSTICE'S COURT, DISTRICT OF COLUMBIA, THE —— DAY OF ——. 189—.

A—— B——)
v.
C—— D——.)

Before ——— ——, justice of the peace.

A constable of the said District, by virtue of an attachment issued at the instance of the plaintiff, having levied the same upon the following property and credits of the defendant, to wit (here specify the property and credits), and the said defendant desiring to have said property and credits discharged from the custody of the officer: Now, therefore, said defendant and —— ——, his suret—, hereby appearing and submitting to the jurisdiction of the court, undertake to pay and satisfy such judgment, if any, as may be rendered against the defendant in this case.

Given under our hands this —— day of ——, 189—.

——— ——.
——— ——.

Signed and delivered by ——— ——— and ——— ——— in my presence this —— day of ——, 189—.

——— ———, *J. P.*

RIGHT OF SURETIES TO INQUIRY.

5. If the plaintiff shall proceed to enforce a recovery upon the undertaking referred to in the last preceding rule, the sureties herein shall have the right to an inquiry before said justice, or before the justice and a jury, as to the value of the thing at the time it was so discharged from the custody of the officer; and the judgment upon such undertaking shall not be for a greater sum than such value so ascertained, and the costs and disbursements.

MOTION TO QUASH ATTACHMENT.

6. On the hearing of the motion to quash, authorized by section 5 of the act of Congress aforesaid, the justice may consider oral testimony to be produced by either party in connection with the

affidavits filed, and also further affidavits to be filed upon notice to the opposite party, or may decide the same upon the affidavits previously filed, alone, if neither party shall desire to produce oral testimony or further affidavits; the justice requiring at least two days' previous notice to be given to the parties of the time of hearing ing such motion.

ORDER OF PUBLICATION.

7. In attachment and replevin suits the summons shall not be returnable in less than ten days (exclusive of Sunday and holidays) from the date of the issue thereof, and the constable shall not return the same "not to be found" until the return day thereof. The form of the order of publication prescribed by section 11 of the statute shall be used in attachment and in replevin cases, and the order shall be published in some newspaper in the District, to be selected by the justice of the peace, at least three times, the first of which shall be at least twenty days (exclusive of Sundays and legal holidays) before the day fixed therein for the defendant's appearance.

But no order of publication shall be made or published in any case unless property has been attached or seized by the constable.

The proof of publication and the proceedings thereon in such cases shall conform to the requirement of sections 6 and 7 of rule 16 of the common law rules of this court.

REPLEVIN.

UNDERTAKING.

8. The undertaking to be given by the plaintiff in replevin shall be in form or effect as follows:

IN JUSTICE'S COURT, DISTRICT OF COLUMBIA.

A—— B—— }
v.
C—— D——. }

The plaintiff intending to sue out a writ of replevin to seize the following goods and chattels in possession of defendant, to wit (here specify the goods and chattels), he and —— ——, his surety, hereby appearing and submitting to the jurisdiction of the court, undertake to abide by and perform the judgment of the said justice's court in the premises, which judgment may be rendered against each and all of us whose names are signed hereto.

Given under ou hands this —— day of ——, 189—.

—— ——.

—— ——.

Signed by —— —— and —— —— in my presence this —— day of ——, 189—, and approved by me as sufficient.

—— ——, *J. P.*

9. Upon the filing of the declaration and a copy thereof for each defendant and the affidavit and undertaking as required by law, the justice of the peace shall issue a summons to the defendant to answer the action in the usual form, to which shall be attached a copy of the declaration, and shall also issue the writ of replevin in form or effect as follows:

The form of the writ of replevin to be issued by the justice shall be similar, *mutatis mutandis*, to that contained in section 2 of rule 14 of the common law rules of this court.

TRIAL OF RIGHT OF PROPERTY.

10. In case of an appeal from the judgment of a justice of the peace determining the right of property, on application made by a claimant, or by a defendant claiming such property as exempt from execution, the constable shall retain the possession of such property during the pendency of said appeal, unless the same be sold as perishable or by consent, or unless the defendant, his agent or attorney, or the other person claiming said property, shall give an undertaking, with one or more sureties to be approved by the justice of the peace, in form or effect as follows, to wit:

IN JUSTICE'S COURT, DISTRICT OF COLUMBIA.

A—— B—— }
v.
C—— D——. }

Before —— ——, one of the justices of the peace for said District.

J—— S——, one of the constables of the said District, having, by virtue of an execution (or attachment) issued in the above-entitled cause, seized and taken into his possession the following personal property, to wit (here specify the property), and (any person other than the defendant claiming the same, or the defendant having claimed that said property is not liable to seizure or sale, as the case may be) with his or their —— sureties, appearing and submitting to the jurisdiction of the said justice of the peace and to the supreme court of the District of Columbia, undertake to deliver to the officer the said property or pay the value thereof if the judgment of the court shall be against said claimant. And they consent that the value of the property may be ascertained at the same time the right of property is tried, and that judgment may be given against each and all the parties signing this undertaking, in the alternative, for the delivery of the property to the officer, or the payment of the value thereof and costs.

Given under our hands this —— day of ——, 189—.

——— ——.

——— ——.

If the justice of the peace shall take such undertaking after the appeal has been perfected and he has forwarded the papers to the clerk of the supreme court of the District, he shall immediately transmit such undertaking to said clerk.

JUDGMENT UPON AFFIDAVIT.

11. In an action before a justice of the peace for money claimed to be due by contract, express or implied, if the plaintiff, his agent or attorney, having knowledge of the facts, shall file an affidavit at the commencement of the suit setting out distinctly the cause of action and the sum claimed due on account thereof, and that the defendant has no just defense thereto, a judgment by default may, without further proof, be entered at any time after the return day of the summons unless the defendant shall file an affidavit on the return day, or within such further time as may be prescribed by the justice, stating that he has a just defense to the plaintiff's claim or some part thereof, and stating specifically, in precise and distinct terms, the grounds of his defense, which must be such as would, if true, defeat the plaintiff's claim in whole or in part. If the affidavit of the defendant denies only a part of the plaintiff's claim, he (the plaintiff) may elect to take judgment by default for the part not denied by the defendant's affidavit, and if he shall do so, that shall be a waiver of the residue of his claim.

The provisions of this rule shall not apply to defendants who are representatives of a decedent's estate except when the affidavit filed with the declaration sets forth that the contract sued on was directly with such representative, or that a promise to pay was made by him.

When the defendant is a corporation, the affidavit of defense may be made by an officer, agent, or attorney of such corporation.

DEPOSITIONS.

12. Where the testimony of nonresident witnesses is desired by either party the justice of the peace may, on motion designating the names of such witnesses, appoint an examiner to take such testimony and may issue a commission under his hand and seal; and said testimony shall be taken on written interrogatories and cross-interrogatories, which interrogatories shall be filed with the justice of the peace at least ten days before the issue of such commission so that the adverse party may have opportunity to file

cross-interrogatories, but the justice of the peace, for special cause shown, may direct that such testimony shall be taken orally.

The commission to be issued under this rule shall conform as near as may be to that in use in the supreme court of the District in like cases.

FEES OF JUSTICES, CONSTABLES, WITNESSES, AND JURORS.

The following schedule of fees for justices of the peace, constables, witnesses, and jurors is adopted, and no justice of the peace or constable shall charge or receive any compensation for services not herein specified, nor shall he charge or receive any greater or less sum for any service than herein provided under any agreement or contract to that effect with any suitor:

For issuing every summons to commence a suit	$0.25
For every additional name, if there be more than one defendant	.05
For each copy of summons or subpœna	.10
For each subpœna for witness	.20
For administering any oath or affirmation at trial	.05
For trial fee	.50
For entering judgment without trial	.20
For each continuance	.15
For filing and entering every declaration, plea, or other paper	.10
For hearing argument on any motion to quash attachment	.30
For entering judgment	.25
For entering satisfaction or discontinuance	.25
For issuing fieri facias	.25
For issuing scire facias	.50
For each copy thereof	.10
For preparing and entering supersedeas bond	.25
For preparing appeal bond, certificate of appeal, and transmission of record	1.00
For writ between landlord and tenant, including affidavit and complaint	1.00
For writ of restitution	.50
For preparing affidavit or affirmation	.25
For issuing warrant on application of the United States or District of Columbia, including affidavit and complaint	.50
For warrant against witness for contempt in disobeying summons	.25
For commitment	.25
For certifying papers to the supreme court, District of Columbia, where no property is found whereon to levy	.50
For return on certiorari, to be paid by the party applying therefor	.50
For short copy of judgment	.50
For attachment on judgment and interrogatories	1.00
For each copy	.10
For bond for costs by nonresidents before entering suit	.25
For attachment for rent, declaration, affidavit, summons	1.00
For attachment against nonresident, etc., with declaration, affidavits, notice to plead, and copies	1.00

For order of publication	$0.25
For order of sale for perishable property	.25
For writ of replevin, with declaration, bond, affidavit, notice to plead, and copies	1.00
For issuing venire facias	.25
For swearing jury	.25
For trial with jury, in addition to other fees, for each day; or in forcible entry and detainer	.50
For recording proceedings therein	.75
For witness's fee, each witness subpœnaed and sworn, per diem	.33⅓
For juror's fee, each juror sworn, per diem	1.00
For taking recognizance or undertaking for costs in any case	.25
For discharge from jail	.25
For every acknowledgment of deed or other instrument of writing, for each person signing	.25
For issuing venditioni exponas	.25
For docketing and indexing suit on change of venue	.25
For filing interrogatories to take depositions, issuing commission and filing return of same	.75
For entering return of execution	.10

CONSTABLE'S FEES.

For serving every summons, each copy	.50
For serving each subpœna	.50
For serving seven days' summons in cases of landlord and tenant	.50
For serving all attachments and writs of replevin	1.00
For serving attachment on judgment	.50
For serving warrant against witness for contempt in disobeying summons.	.50
For transfer of papers from one justice to another on change of venue	.25
For summoning each juror accepted in case of trial by jury	.25
For taking charge of jury	1.00
For serving writ of scire facias	.50
For return of writ of fieri facias	.50
For summoning and swearing three appraisers	1.00
For all services in connection with writs of attachment other than service and appraisement, 3 per cent. on the amount recovered.	
For all services in connection with writs of replevin other than service and appraisement, 3 per cent. on the appraised value.	
For notice of sale	.25
For executing a writ of possession of real estate (all other expenses necessarily incurred in executing the writ to be paid by the landlord)	1.00

All charges for fees and costs for the officers above named which are not comprehended in the above schedules, under the statutes or rules of this court, are to remain in force until otherwise ordered.

The foregoing rules and schedules of charges for fees of officers and costs are hereby adopted by the supreme court in general term this day, and are ordered to be entered upon the minutes of the court.

By the court:

A. B. HAGNER, *Presiding Justice.*

JULY 31, 1895.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES,

AT

OCTOBER TERM, 1898.

CAPITAL TRACTION COMPANY *v.* HOF.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 108. Argued January 5, 6, 1899. — Decided April 11, 1899.

This court has jurisdiction to review by writ of error, under the act of February 9, 1893, c. 74, § 8, a judgment of the Court of Appeals of the District of Columbia, maintaining the validity of proceedings for a trial by a jury before a justice of peace, which were sought to be set aside on the ground that the act of Congress authorizing such a trial was unconstitutional.

The provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia.

By the Seventh Amendment to the Constitution, either party to an action at law (as distinguished from suits in equity and in admiralty) in a court of the United States, where the value in controversy exceeds twenty dollars, has the right to a trial by jury.

By the Seventh Amendment to the Constitution, when a trial by jury has been had in an action at law, in a court either of the United States or of a State, the facts there tried and decided cannot be reëxamined in any court of the United States otherwise than according to the rules of the common law of England, that is to say, upon a new trial, either granted by the court in which the first trial was had or to which the record was returnable, or ordered by an appellate court for error in law.

Opinion of the Court.

"Trial by jury," in the primary and usual sense of the term at the common law and in the American constitutions, is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them upon the law and to advise them upon the facts, and (except upon acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence.

A trial of a civil action, before a justice of the peace of the District of Columbia, by a jury of twelve men, as permitted by the acts of Congress, without requiring him to superintend the course of the trial or to instruct the jury in matter of law, or authorizing him to arrest judgment upon their verdict, or to set it aside for any cause whatever, is not a trial by jury, in the sense of the common law and of the Constitution, and does not prevent facts so tried from being tried anew by a common law jury in an appellate court.

Congress, in the exercise of its general and exclusive power of legislation over the District of Columbia, may provide for the trial of civil causes of moderate amount before a justice of the peace, or, in his presence, by a jury of twelve, or of any less number, allowing to either party, where the value in controversy exceeds twenty dollars, the right to appeal from the judgment of the justice of the peace to a court of record, and to have a trial by jury in that court.

The appeal authorized by Congress from judgments of a justice of the peace in the District of Columbia to a court of record, "in all cases where the debt or damage doth exceed the sum of five dollars," includes cases of judgments entered upon the verdict of a jury.

The right of trial by jury, secured by the Seventh Amendment to the Constitution, is not infringed by the act of Congress of February 19, 1895, c. 100, enlarging the jurisdiction of a justice of the peace in the District of Columbia to three hundred dollars, and requiring every appellant from his judgment to enter into an undertaking, with surety, to pay and satisfy the final judgment of the appellate court.

The case is stated in the opinion of the court.

Mr. R. Ross Perry for plaintiff in error.

Mr. Alexander Wolf for defendant in error.

Mr. Justice Gray delivered the opinion of the court.

On September 8, 1896, the Capital Traction Company, a street railway corporation in the District of Columbia, presented to the Supreme Court of the District a petition for a writ of certiorari to a justice of the peace to prevent a civil

action to recover damages in the sum of $300 from being tried by a jury before him.

The petition for a writ of certiorari alleged that Charles Hof, on August 17, 1896, caused a summons to be issued by Lewis I. O'Neal, Esquire, one of the justices of the peace in and for the District of Columbia, summoning the Capital Traction Company to appear before him on August 20, 1896, "to answer unto the complaint of Charles Hof in a plea of damage of $300," and the matter was postponed until September 8, on which day, after the company had put in its plea, and issue had been joined thereon, the attorney for Hof demanded of the justice of the peace that the action should be tried by a jury, and thereupon the justice of the peace issued a *venire* to a constable, commanding him to summon twelve jurors to appear before said justice on September 10; that the petitioner was advised that such a demand for the so-called jury was founded upon sections 1009–1016 of the Revised Statutes of the District of Columbia, and was intended to subject the petitioner, without appeal, to a form of trial before a justice of the peace, unknown to the common law, and, as the petitioner was advised, illegal and unconstitutional; that the petitioner was informed and believed that Hof's claim was for damages sustained by him through its negligence, while he was a passenger on one of its cars; and that it had a good defence on the merits to his claim, and sought a fair opportunity to make such defence before an impartial tribunal, and was ready and willing to give any security that might be required for the prompt payment of any final judgment which might be pronounced against it in due course of law.

The petition further averred that the only method in which Hof's claim against the petitioner could be tried by a jury according to the common law and the Constitution was by removing his suit from the justice of the peace into the Supreme Court of the District of Columbia; that if this was not done, the petitioner would be deprived of its constitutional right to a trial by jury, and would be in danger of being deprived of its property without due process of law, and would

be denied the equal protection of the laws; and that the amount claimed by Hof was within the jurisdiction of that court.

Wherefore the petitioner prayed that a writ of certiorari might be issued to the justice of the peace to remove Hof's claim into that court for trial according to the course of the common law, upon such terms as to security for costs and damages as the court might think proper; and for such other and further relief as the petitioner might be entitled to.

The Supreme Court of the District of Columbia granted a writ of certiorari to the justice of the peace, as prayed for; and the justice of the peace, in his return thereto, set forth the proceedings before him in the action of Hof against the Capital Traction Company, showing the issue and return of the summons to the defendant, its oral plea of not guilty, the plaintiff's joinder of issue and demand of a jury, and the stay of further proceedings by the writ of certiorari.

On October 6, 1896, the Supreme Court of the District of Columbia overruled a motion of Hof to quash the writ of certiorari; and entered an order quashing all proceedings before the justice of the peace after issue joined. 24 Wash. Law Rep. 646. Hof appealed to the Court of Appeals of the District of Columbia, which on February 17, 1897, reversed that order, and remanded the case with directions to quash the writ of certiorari. 10 App. D. C. 205. The Capital Traction Company thereupon sued out a writ of error from this court, under the act of February 9, 1893, c. 74, § 8. 27 Stat. 436.

The petition for a writ of certiorari presents for determination a serious and important question of the validity, as well as the interpretation and effect, of the legislation of Congress conferring upon justices of the peace in the District of Columbia jurisdiction in civil actions in which the matter in dispute exceeds twenty dollars in value, and providing for a trial by a jury before the justice of the peace, an appeal from his judgment to the Supreme Court of the District of Columbia, and a trial by jury, at the request of either party, in the appellate court. This court, therefore, has jurisdiction of the writ of error. *Baltimore & Potomac Railroad* v. *Hopkins*,

130 U. S. 210, 224; *Parsons* v. *District of Columbia*, 170 U. S. 45.

The Court of Appeals was unanimous in maintaining the validity of the proceedings looking to a trial by a jury before the justice of the peace. But there was a difference of opinion between the two associate justices and the chief justice upon the question whether such a trial before the justice of the peace would be a trial by jury, according to the common law and the Constitution; as well as upon the question whether the trial by jury, allowed by Congress in the Supreme Court of the District, upon appeal from the judgment of the justice of the peace, and upon the condition of giving bond to pay the final judgment of the appellate court, satisfied the requirements of the Constitution.

I. The Congress of the United States, being empowered by the Constitution "to exercise exclusive legislation in all cases whatsoever" over the seat of the National Government, has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the District all legislative powers that the legislature of a State might exercise within the State; and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States. *Kendall* v. *United States*, (1838) 12 Pet. 524, 619; *Mattingly* v. *District of Columbia*, (1878) 97 U. S. 687, 690; *Gibbons* v. *District of Columbia*, (1886) 116 U. S. 404, 407.

It is beyond doubt, at the present day, that the provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia. *Webster* v. *Reid*, (1850) 11 How. 437, 460; *Callan* v. *Wilson*, (1888) 127 U. S. 540, 550; *Thompson* v. *Utah*, (1898) 170 U. S. 343.

The decision of this case mainly turns upon the scope and effect of the Seventh Amendment of the Constitution of the United States. It may therefore be convenient, before particularly examining the acts of Congress now in question, to

refer to the circumstances preceding and attending the adoption of this Amendment, to the contemporaneous understanding of its terms, and to the subsequent judicial interpretation thereof, as aids in ascertaining its true meaning, and its application to the case at bar.

II. The first Continental Congress, in the Declaration of Rights adopted October 14, 1774, unanimously resolved that "the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law." 1 Journals of Congress, 28.

The Ordinance of 1787 declared that the inhabitants of the Northwest Territory should "always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury," "and of judicial proceedings according to the course of the common law." 1 Charters and Constitutions, 431.

The Constitution of the United States, as originally adopted, merely provided in article 3, section 3, that "the trial of all crimes, except in cases of impeachment, shall be by jury." In the Convention which framed the Constitution, a motion to add this clause, "and a trial by jury shall be preserved as usual in civil cases," was opposed by Mr. Gorham of Massachusetts, on the ground that "the constitution of juries is different in different States, and the trial itself is usual in different cases, in different States;" and was unanimously rejected. 5 Elliott's Debates, 550.

Mr. Hamilton, in number 81 of the Federalist, when discussing the clause of the Constitution which confers upon this court "appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make," and again, in more detail, in number 83, when answering the objection to the want of any provision securing trial by jury in civil actions, stated the diversity then existing in the laws of the different States regarding appeals and jury trials; and especially pointed out that in the New England States, and in those alone, appeals were allowed, as of course, from one jury to another until there had been two verdicts on one side, and in no other State but Georgia was there any

appeal from one to another jury. The diversity in the laws of the several States, he insisted, "shows the impropriety of a technical definition derived from the jurisprudence of any particular State," and "that no general rule could have been fixed upon by the Convention which would have corresponded with the circumstances of all the States." And he suggested that "the legislature of the United States would certainly have full power to provide that in appeals to the Supreme Court there should be no reëxamination of facts where they had been tried in the original causes by juries;" but if this "should be thought too extensive, it might be qualified with a limitation to such causes only as are determinable at common law in that mode of trial." 2 Federalist, (ed. 1788) pp. 319–321, 335, 336.

At the first session of the first Congress under the Constitution, Mr. Madison, in the House of Representatives, on June 8, 1789, submitted propositions to amend the Constitution by adding, to the clause concerning the appellate jurisdiction of this court, the words, "nor shall any fact, triable by a jury, according to the course of the common law, be otherwise reexaminable than according to the principles of the common law;" and, to the clause concerning trial by jury, these words: "In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate." 1 Annals of Congress, 424, 435. And those propositions, somewhat altered in form, were embodied in a single article, which was proposed by Congress on September 25, 1789, to the legislatures of the several States, and upon being duly ratified by them, became the Seventh Amendment to the Constitution, in these words: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise reexamined, in any court of the United States, than according to the rules of the common law."

A comparison of the language of the Seventh Amendment, as finally made part of the Constitution of the United States, with the Declaration of Rights of 1774, with the Ordinance

of 1787, with the essays of Mr. Hamilton in 1788, and with the amendments introduced by Mr. Madison in Congress in 1789, strongly tends to the conclusion that the Seventh Amendment, in declaring that "no fact tried by a jury shall be otherwise reëxamined, in any court of the United States, than according to the rules of the common law," had in view the rules of the common law of England, and not the rules of that law as modified by local statute or usage in any of the States.

This conclusion has been established, and "the rules of the common law" in this respect clearly stated and defined, by judicial decisions.

In *United States* v. *Wonson*, (1812) 1 Gallison, 5, a verdict and judgment for the defendant having been rendered in the District Court of the United States for the District of Massachusetts in an action of debt for a penalty, the United States appealed to the Circuit Court, and were held not to be entitled to try by a new jury in that court facts which had been tried and determined by the jury in the court below. "We should search in vain," said Mr. Justice Story, "in the common law, for an instance of an appellate court retrying the cause by a jury, while the former verdict and judgment remained in full force. The practice indeed seems to be a peculiarity of New England, and, if I am not misinformed, does not exist in more than one (if any) other State in the Union." And, after quoting the words of the Seventh Amendment, he observed: "Beyond all question, the common law here alluded to is not the common law of any individual State, (for it probably differs in all,) but it is the common law of England, the grand reservoir of all our jurisprudence." "Now, according to the rules of the common law, the facts once tried by a jury are never reëxamined, unless a new trial is granted in the discretion of the court before which the suit is depending, for good cause shown; or unless the judgment of such court is reversed by a superior tribunal, on a writ of error, and a *venire facias de novo* is awarded. This is the invariable usage, settled by the decisions of ages." 1 Gallison, 14, 20.

In *Parsons* v. *Bedford*, (1830) 3 Pet. 433, this court, on writ of error to a lower court of the United States, held that

it had no power to reëxamine facts tried by a jury in the court below, although that court was held in Louisiana, where Congress had enacted that the mode of proceeding should conform to the laws directing the mode of practice in the district courts of the State, and a statute of the State authorized its supreme court to try anew on appeal facts tried by a jury in a district court. Mr. Justice Story, in delivering the judgment of this court, expounding the Seventh Amendment to the Constitution, after showing that, in the first clause, the words "suits at common law" were used in contradistinction to suits in equity and in admiralty, and included "not merely suits which the common law recognized among its old and settled proceedings," but all suits in which legal rights, and not equitable rights, were ascertained and determined, proceeded as follows: "But the other clause of the Amendment is still more important; and we read it as a substantial and independent clause. 'No fact tried by a jury shall be otherwise reëxamined, in any court of the United States, than according to the rules of the common law.' This is a prohibition to the courts of the United States to reëxamine any facts, tried by a jury, in any other manner. The only modes known to the common law to reëxamine such facts are the granting of a new trial by the court where the issue was tried, or to which the record was properly returnable; or the award of a *venire facias de novo*, by an appellate court, for some error of law which intervened in the proceedings." 3 Pet. 446–448.

This last statement has been often reaffirmed by this court. *Barreda* v. *Silsbee*, (1858) 21 How. 146, 166; *Justices* v. *Murray*, (1869) 9 Wall. 274, 277; *Miller* v. *Life Insurance Co.*, (1870) 12 Wall. 285, 300; *Insurance Co.* v. *Comstock*, (1872) 16 Wall. 258, 269; *Insurance Co.* v. *Folsom*, (1873) 18 Wall. 237, 249; *Railroad Co.* v. *Fraloff*, (1879) 100 U. S. 24, 31; *Lincoln* v. *Power*, (1894) 151 U. S. 436, 438; *Chicago, Burlington & Quincy Railroad* v. *Chicago*, (1897) 166 U. S. 226, 246.

The Judiciary Act of September 24, 1789, c. 20, drawn by Senator (afterwards Chief Justice) Ellsworth, and passed — within six months after the organization of the Government under the Constitution, and on the day before the first ten

Amendments were proposed to the legislatures of the States — by the First Congress, in which were many eminent men who had been members of the Convention which formed the Constitution, has always been considered as a contemporaneous exposition of the highest authority. *Cohens* v. *Virginia*, (1821) 6 Wheat. 264, 420; *Parsons* v. *Bedford*, above cited; *Börs* v. *Preston*, (1884) 111 U. S. 252, 256; *Ames* v. *Kansas*, (1884) 111 U. S. 449, 463, 464; *Wisconsin* v. *Pelican Ins. Co.*, (1888) 127 U. S. 265, 297. That act provided, in §§ 9 and 12, that the trial of issues of fact, in a District or Circuit Court, in all suits, except those of equity or admiralty jurisdiction, should be by jury; in § 13, that the trial of issues of fact in this court, in the exercise of its original jurisdiction, in all actions at law against citizens of the United States, should be by jury; in § 17, that "all the said courts of the United States" should "have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law;" and in §§ 22 and 24, that final judgments of the District Court might be reviewed by the Circuit Court, and final judgments of the Circuit Court be reviewed by this court, upon writ of error, for errors in law, but not for any error in fact. 1 Stat. 77, 80, 81, 83, 84. Those provisions, so far as regards actions at law, have since remained in force, almost uninterruptedly; and they have been reënacted in the Revised Statutes, allowing the parties, however, to waive a jury and have their case tried by the court. Rev. Stat. §§ 566, 633, 648, 689, 691, 726, 1011.

The only instances that have come to our notice, in which Congress has undertaken to authorize a second trial by jury to be had in a court of the United States, while the verdict of a jury upon a former trial in a court of record has not been set aside, are to be found in two temporary acts passed during the last war with Great Britain, and in an act passed during the war of the rebellion and continued in force for a short time afterwards, each of which provided that certain actions brought in a state court against officers or persons acting under the authority of the United States might, after final judgment, be removed by appeal or writ of error to the

Circuit Court of the United States, and that court should "thereupon proceed to try and determine the facts and the law in such action in the same manner as if the same had been there originally commenced, the judgment in such case notwithstanding." Acts of February 4, 1815, c. 31, §§ 8, 13, and March 3, 1815, c. 94, §§ 6, 8; 3 Stat. 199, 200, 234, 235; Act of March 3, 1863, c. 81, § 5; 12 Stat. 757; Act of May 11, 1866, c. 80, § 3; 14 Stat. 46. But such a provision, so far as it authorized the facts to be tried and determined in the Circuit Court of the United States in a case in which a verdict had been returned in the state court, was held to be inconsistent with the Seventh Amendment of the Constitution of the United States by the Supreme Judicial Court of Massachusetts, in a case arising under the acts of 1815; and by the Supreme Court of New York and by this court, in cases arising under the acts of 1863 and 1866. *Wetherbee* v. *Johnson*, (1817) 14 Mass. 412; *Patrie* v. *Murray*, (1864) 43 Barb. 323; *S. C. nom. Justices* v. *Murray*, (1869) 9 Wall. 274; *McKee* v. *Rains*, (1869) 10 Wall. 22.

In *Justices* v. *Murray*, an action was brought by Patrie against Murray, a United States marshal, and his deputy, in the Supreme Court of the State of New York, and a verdict and judgment for the plaintiff were rendered in that court. The defendant sued out a writ of error from the Circuit Court of the United States, under the act of Congress of March 3, 1863, c. 81, § 5; and moved the state court to stay proceedings. The state court denied the motion, and refused to make a return to the writ of error, upon the ground that the act of Congress, so far as it provided that a case, after verdict and judgment in a state court, might be removed to the Circuit Court of the United States for trial and determination upon both the facts and the law, in the same manner as if the case had been originally commenced in that court, was in violation of the Seventh Amendment of the Constitution of the United States, and for that reason null and void. *Patrie* v. *Murray*, 43 Barb. 323. Thereupon the Circuit Court of the United States, without expressing any opinion upon this point, granted a writ of mandamus to the clerk of the state court.

Murray v. *Patrie*, 1 Blatchford, 343; 9 Wall. 276, note. The judgment of the Circuit Court ordering a mandamus was then brought to this court by writ of error, and reversed. Mr. Justice Nelson, in delivering judgment, after remarking that the case (which had been twice argued by very able counsel) had received the most deliberate consideration of the court, quoting the statements of Mr. Justice Story in *Parsons* v. *Bedford*, above cited, and recognizing that the second clause of the Seventh Amendment could not be invoked in a state court to prohibit it from reëxamining, on a writ of error, facts that had been tried by a jury in a lower court, went on to say: "It is admitted that the clause applies to the appellate powers of the Supreme Court of the United States in all common law cases coming up from an inferior Federal court, and also to the Circuit Court, in like cases, in the exercise of its appellate powers. And why not, as it respects the exercise of these powers, in cases of Federal cognizance coming up from a state court? The terms of the Amendment are general, and contain no qualification in respect to the restriction upon the appellate jurisdiction of the courts, except as to the class of cases, namely, suits at common law, where the trial has been by jury. The natural inference is that no other was intended. Its language, upon any reasonable, if not necessary, interpretation, we think, applies to this entire class, no matter from what court the case comes, of which cognizance can be taken by the appellate court." The *ratio decidendi*, the line of thought pervading and controlling the whole opinion, was that the Seventh Amendment undoubtedly prohibited any court of the United States from reëxamining facts once tried by a jury in a lower court of the United States, and that there was no reason why the prohibition should not equally apply to a case brought into a court of the United States from a state court. "In both instances," it was said, "the cases are to be disposed of by the same system of laws, and by the same judicial tribunal." 9 Wall. 277–279.

In *Chicago, Burlington & Quincy Railroad* v. *Chicago*, 166 U. S. 226, 242–244, the same course of reasoning was fol-

lowed, and was applied to a case brought by writ of error from the highest court of a State to this court.

It must therefore be taken as established, by virtue of the Seventh Amendment of the Constitution, that either party to an action at law (as distinguished from suits in equity or in admiralty) in a court of the United States, where the value in controversy exceeds twenty dollars, has the right to a trial by jury; that, when a trial by jury has been had in an action at law, in a court either of the United States or of a State, the facts there tried and decided cannot be reëxamined in any court of the United States, otherwise than according to the rules of the common law of England; that by the rules of that law, no other mode of reëxamination is allowed than upon a new trial, either granted by the court in which the first trial was had or to which the record was returnable, or ordered by an appellate court for error in law; and therefore that, unless a new trial has been granted in one of those two ways, facts once tried by a jury cannot be tried anew, by a jury or otherwise, in any court of the United States.

The case of enforcing, in a court of the United States, a statute of a State giving one new trial, as of right, in an action of ejectment, is quite exceptional; and such a statute does not enlarge, but restricts, the rules of the common law as to reëxamining facts once tried by a jury, for by the common law a party was not concluded by a single verdict and judgment in ejectment, but might bring as many successive ejectments as he pleased, unless restrained by a court of equity after repeated verdicts against him. Bac. Ab. Ejectment, I; *Equator Co.* v. *Hall*, (1882) 106 U. S. 86; *Smale* v. *Mitchell*, (1892) 143 U. S. 99.

III. "Trial by jury," in the primary and usual sense of the term at the common law and in the American constitutions, is not merely a trial by a jury of twelve men before an officer vested with authority to cause them to be summoned and empanelled, to administer oaths to them and to the constable in charge, and to enter judgment and issue execution on their verdict; but it is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to

instruct them on the law and to advise them on the facts, and (except on acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence. This proposition has been so generally admitted, and so seldom contested, that there has been little occasion for its distinct assertion. Yet there are unequivocal statements of it to be found in the books.

Lord Hale, in his History of the Common Law, c. 12, "touching trial by jury," says: "Another excellency of this trial is this, that the judge is always present at the time of the evidence given in it. Herein he is able in matters of law, emerging upon the evidence, to direct them; and also, in matters of fact, to give them great light and assistance, by his weighing the evidence before them, and observing where the question and knot of the business lies; and by showing them his opinion even in matter of fact, which is a great advantage and light to laymen. And thus, as the jury assists the judge in determining the matter of fact, so the judge assists the jury in determining points of law, and also very much in investigating and enlightening the matter of fact, whereof the jury are the judges." And again, in summing up the advantages of trial by jury, he says: "It has the advantage of the judge's observation, attention and assistance, in point of law by way of decision, and in point of fact by way of direction to the jury." 2 Hale Hist. Com. Law, (5th ed.) 147, 156. See also 1 Hale P. C. 33.

The Supreme Court of Ohio held that the provision of article 1, section 19, of the constitution of that State, requiring compensation for private property taken for the public use to "be assessed by a jury," was not satisfied without an assessment by a jury of twelve men under the supervision of a court; and, speaking by Chief Justice Thurman, said: "That the term 'jury,' without addition or prefix, imports a body of twelve men in a court of justice, is as well settled as any legal proposition can be." "We agree with Grimke, J., in *Willyard* v. *Hamilton*, 7 Ohio, pt. 2, 111, 118, that a jury, properly speaking, is an appendage of a court, a tribunal auxiliary to the administration of justice in a court, that a presiding law tribunal

is implied, and that the conjunction of the two is the peculiar and valuable feature of the jury trial; and, as a necessary inference, that a mere commission, though composed of twelve men, can never be properly regarded as a jury. Upon the whole, after a careful examination of the subject, we are clearly of the opinion that the word 'jury,' in section 19 of article 1, as well as in other places in the constitution where it occurs, means a tribunal of twelve men, presided over by a court, and hearing the allegations, evidence and arguments of the parties." *Lamb* v. *Lane*, (1854) 4 Ohio St. 167, 177, 179.

The Justices of the Supreme Judicial Court of New Hampshire, in an opinion given to the House of Representatives of the State, said: "The terms 'jury,' and 'trial by jury,' are, and for ages have been, well known in the language of the law. They were used at the adoption of the constitution, and always, it is believed, before that time, and almost always since, in a single sense. A jury for the trial of a cause was a body of twelve men, described as upright, well qualified and lawful men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor or against either party, duly empanelled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them; who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict upon the issue submitted to them." *Opinion of Justices*, (1860) 41 N. H. 550, 551.

Judge Sprague, in the District Court of the United States for the District of Massachusetts, said: "The Constitution secures a trial by jury, without defining what that trial is. We are left to the common law to learn what it is that is secured. Now the trial by jury was, when the Constitution was adopted, and for generations before that time had been, here and in England, a trial of an issue of fact by twelve men, under the direction and superintendence of the court. This

direction and superintendence was an essential part of the trial." "At the time of the adoption of the Constitution, it was a part of the system of trial by jury in civil cases that the court might, in its discretion, set aside a verdict." "Each party, the losing as well as the winning, has a right to the legitimate trial by jury, with all its safeguards, as understood when the Constitution was adopted." *United States* v. *Bags of Merchandise*, (1863) 2 Sprague, 85–88.

This court has expressed the same idea, saying: "In the courts of the United States, as in those of England, from which our practice was derived, the judge, in submitting a case to the jury, may, at his discretion, whenever he thinks it necessary to assist them in arriving at a just conclusion, comment upon the evidence, call their attention to parts of it which he thinks important, and express his opinion upon the facts." *Vicksburg &c. Railroad* v. *Putnam*, (1886) 118 U. S. 545, 553. And again: "Trial by jury in the courts of the United States is a trial presided over by a judge, with authority, not only to rule upon objections to evidence and to instruct the jury upon the law, but also, when in his judgment the due administration of justice requires it, to aid the jury by explaining and commenting upon the testimony, and even giving them his opinion on questions of fact, provided only he submits those questions to their determination." *United States* v. *Philadelphia & Reading Railroad*, (1887) 123 U. S. 113, 114. And see *Sparf* v. *United States*, (1895) 156 U. S. 51, 102, 106; *Thompson* v. *Utah*, (1898) 170 U. S. 343, 350; Miller on the Constitution, 511; Cooley's Principles of Constitutional Law, 239.

IV. By the common law, justices of the peace had some criminal jurisdiction, but no jurisdiction whatever of suits between man and man. There were in England, however, courts baron, county courts, courts of conscience and other petty courts, which were not courts of record, and whose proceedings varied in many respects from the course of the common law, but which were empowered to hear and determine, in a summary way, without a jury, personal actions in which the debt or damages demanded did not exceed forty

shillings. 3 Bl. Com. 33, 35, 81. The twelve freeholders summoned to the county court of Middlesex, and authorized, when there assembled together with the county clerk, and without any judge being present, to decide by a majority, and in a summary way, causes not exceeding forty shillings, under the statute of 23 Geo. II, c. 33, (1750) commended by Blackstone, were clearly not a common law jury. 3 Bl. Com. 83, and Coleridge's note.

In this country, before the Declaration of Independence, the jurisdiction over small debts, which county courts and similar courts had in England, was generally vested in single justices of the peace. Whenever a trial by jury of any kind was allowed at any stage of an action begun before a justice of the peace, it was done in one of two ways; either by providing for an appeal from the judgment of the justice of the peace to a court of record, upon giving bond, with surety, "to prosecute the said appeal there with effect, and to abide the order of said court," and for a trial in that court by a common jury, as in Massachusetts; 6 Dane Ab. 405, 442; Mass. Prov. Stats. 1697, c. 8, § 1, and 1699, c. 2, § 3, (1 Prov. Laws, State ed. pp. 283, 370,) and Stat. 1783, c. 42; or by providing for a trial by a jury of six before the justice of the peace, as in New York and in New Jersey; 6 Dane Ab. 417; N. Y. Stats. of December 16, 1737, 1 Smith & Livingston's Laws, p. 238, § 4, and of December 24, 1759, 2 Ib. p. 170, § 4; N. J. Stat. February 11, 1775, Allinson's Laws, p. 468; *Wanser* v. *Atkinson*, (1881) 14 Vroom, (43 N. J. Law,) 571, 572.

Justices of the peace in the District of Columbia, in the exercise of the jurisdiction conferred upon them by Congress to try and determine cases, criminal or civil, are doubtless, in some sense, judicial officers. *Wise* v. *Withers*, 3 Cranch, 330, 336. But they are not inferior courts of the United States, for the Constitution requires judges of all such courts to be appointed during good behavior. Nor are they, in any sense, courts of record. They were never considered in Maryland as "courts of law." *Weikel* v. *Cate*, (1882) 58 Maryland, 105, 110. The statutes of Maryland of 1715, c. 12, and of 1763, c. 21, (in Bacon's Laws of Maryland,) and of 1791, c. 68, (in

2 Kilty's Laws,) defining the civil jurisdiction of justices of the peace, were entitled acts "for the speedy recovery of small debts out of court." And Congress has vested in them, "as individual magistrates," the powers and duties which justices of the peace previously had under the laws in force in the District of Columbia. Act of February 27, 1801, c. 15, § 11; 2 Stat. 107; Rev. Stat. D. C. § 995.

A trial by a jury of twelve men before a justice of the peace, having been unknown in England or America before the Declaration of Independence, can hardly have been within the contemplation of Congress in proposing, or of the people in ratifying, the Seventh Amendment to the Constitution of the United States.

V. Another question having an important bearing on the validity and the interpretation of the successive acts of Congress, concerning trial by jury in civil actions begun before justices of the peace in the District of Columbia, is whether the right of trial by jury, secured by the Seventh Amendment to the Constitution, is preserved by allowing a common law trial by jury in a court of record, upon appeal from a judgment of a justice of the peace, and upon giving bond with surety to prosecute the appeal and to abide the judgment of the appellate court.

The question considered and decided by this court in *Callan* v. *Wilson*, (1888) 127 U. S. 540, though somewhat analogous, was essentially a different one. That case was a criminal case, not affected by the Seventh Amendment of the Constitution, but depending upon the effect of those other provisions of the original Constitution and of the Fifth and Sixth Amendments, which declare that "the trial of all causes, except in cases of impeachment, shall be by jury," that "no person shall be deprived of life, liberty or property without due process of law," and that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury." The point there decided was that a person accused of a conspiracy to prevent another person from pursuing his lawful calling, and by intimidations and molestations to reduce him to beggary, had the right to a trial by

jury in the first instance, and that it was not enough to allow him a trial by jury after having been convicted by a justice of the peace without a jury. The decision proceeded upon the ground that such a conspiracy was an offence of a grave character, affecting the public at large, as well as one the punishment of which might involve the liberty of the citizen; it was conceded that there was a class of minor offences to which the same rule could not apply; and the question of applying a like rule to civil cases did not arise in the case, and was not touched by the court.

All the other cases cited at the bar, in which the constitutional right of trial by jury was held not to be secured by allowing such a trial on appeal from a justice of the peace, or from an inferior court, were criminal cases. *Greene* v. *Briggs*, (1852) 1 Curtis, 311, 325; *Saco* v. *Wentworth*, (1853) 37 Maine, 165; *In re Dana*, (1872) 7 Benedict, 1.

On the other hand, the authority of the legislature, consistently with constitutional provisions securing the right of trial by jury, to provide, in civil proceedings for the recovery of money, that the trial by jury should not be had in the tribunal of first instance, but in an appellate court only, is supported by unanimous judgments of this court in two earlier cases, the one arising in the District of Columbia, and the other in the State of Pennsylvania.

The declaration of rights, prefixed to the constitution of Maryland of 1776, declared, in article 3, that "the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law;" and, in article 21, repeated the words of Magna Charta, "No person ought to be taken or imprisoned," &c., "or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land." 1 Charters and Constitutions, 817, 818. The statute of the State of Maryland of 1793, c. 30, incorporating a bank in the District of Columbia, provided that on any bill or note made or indorsed to the bank, and expressly made negotiable at the bank, and not paid when due, or within ten days after demand, the bank, upon filing an affidavit of its president to the sum due, might obtain

from the clerk of a court an execution against the property of the debtor; "and if the defendant shall dispute the whole or any part of the said debt, on the return of the execution, the court before whom it is returned shall and may order an issue to be joined, and trial to be had in the same court at which the return is made, and shall make such other proceedings that justice may be done in the speediest manner." 2 Kilty's Laws. The general court of Maryland, in 1799, held that this statute did not infringe the constitutional right of trial by jury. *Bank of Columbia* v. *Ross*, 4 Har. & McH. 456, 464, 465. The statute was continued in force in the District of Columbia by the acts of Congress of February 27, 1801, c. 15, § 5, and March 3, 1801, c. 24, § 5. 2 Stat. 106, 115; *Bank of Columbia* v. *Okely*, (1819) 4 Wheat. 235, 246.

In *Bank of Columbia* v. *Okely*, an execution so issued was sought to be quashed upon the ground that the statute of Maryland violated the Seventh Amendment of the Constitution of the United States, as well as the constitution of the State of Maryland. But this court held the statute to be consistent with both constitutions, and, speaking by Mr. Justice Johnson, said: "This court would ponder long before it would sustain this action, if we could be persuaded that the act in question produced a total prostration of the trial by jury, or even involved the defendant in circumstances which rendered that right unavailing for his protection. But a power is reserved to the judge, to make such rules and orders 'as that justice may be done;' and as the possession of judicial power imposes an obligation to exercise it, we flatter ourselves that, in practice, the evils so eloquently dilated on by the counsel do not exist. And if the defendant does not avail himself of the right given him, of having an issue made up, and the trial by jury, which is tendered to him by the act, it is presumable that he cannot dispute the justice of the claim. That this view of the subject is giving full effect to the Seventh Amendment of the Constitution is not only deducible from the general intent, but from the express wording of the Article referred to. Had the terms been that 'the *trial* by jury shall be preserved,' it might

have been contended that they were imperative, and could not be dispensed with. But the words are, that the *right* of trial by jury shall be preserved, which places it on the foot of a *lex pro se introducta*, and the benefit of it may therefore be relinquished. As to the words of Magna Charta, incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. With this explanation, there is nothing left to this individual to complain of. What he has lost, he has voluntarily relinquished; and the trial by jury is open to him, either to arrest the progress of the law in the first instance, or to obtain redress for oppression, if the power of the bank has been abused. The same answer is equally applicable to the argument founded on the third article of the Maryland constitution." 4 Wheat. 243, 244.

The constitution of Pennsylvania of 1776 provided, in article 11 of the declaration of rights, that "in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred," and, in section 25 of the frame of government, that "trials shall be by jury as heretofore;" and the constitution of 1790, in section 6 of the bill of rights, declared that "trial by jury shall be as heretofore, and the right thereof remain inviolate." 2 Charters and Constitutions, 1542, 1546, 1554. The statutes of Pennsylvania, from 1782, required all accounts between the State and its officers to be settled by the comptroller general, and approved by the executive council; and, if a balance was found due to the State, authorized the comptroller general to direct the clerk of the county where the officer resided to issue summary process to collect the amount due. And a statute of February 18, 1785, after reciting "whereas it will be agreeable to the constitution of this State, which has declared that 'trial by jury shall be as heretofore,' that persons conceiving themselves aggrieved by the

proceedings of the said comptroller general should be allowed to have trial of the facts by a jury, and questions of law arising thereupon determined in a court of record," enacted that any such person might appeal from the settlement or award of the comptroller general to the Supreme Court of the State, "provided the said party enter sufficient security" before a judge "to prosecute such appeal with effect, and to pay all costs and charges which the Supreme Court shall award, and also pay any sum of money which shall appear by the judgment of the said court to be due from him" to the State; and might have the whole matter tried by a jury upon the appeal. This statute also provided that the settlement of any account by the comptroller general, and confirmation thereof by the executive council, whereby any sum of money should be found due from any person to the State, should be a lien on all his real estate throughout the State. 2 Dall. Laws Penn. 44, 247, 248, 251.

In *Livingston* v. *Moore*, (1833) 7 Pet. 469, which came to this court from the Circuit Court of the United States for the Eastern District of Pennsylvania, the validity of a lien so acquired by the State was attacked on the ground, among others, that the statutes creating it were contrary to section 6 of the Pennsylvania bill of rights of 1790. But this court upheld the validity of the lien, and in an opinion delivered by Mr. Justice Johnson, after elaborately discussing the other questions in the case, briefly disposed of this one as follows: "As to the sixth section of the Pennsylvania bill of rights, we can see nothing in these laws on which to fasten the imputation of a violation of the right of trial by jury; since, in creating the lien attached to the settled accounts, the right of an appeal to a jury is secured to the debtor." 7 Pet. 552.

While, as has been seen, the Seventh Amendment to the Constitution of the United States requires that "the right of trial by jury shall be preserved" in the courts of the United States in every action at law in which the value in controversy exceeds twenty dollars, and forbids any fact once tried by a jury to "be otherwise reëxamined, in any court of the United States, than according to the rules of the common law," mean-

ing thereby the common law of England, and not the law of any one or more of the States of the Union, yet it is to be remembered that, as observed by Justice Johnson, speaking for this court, in *Bank of Columbia* v. *Okely*, above cited, it is not "trial by jury," but "the right of trial by jury," which the Amendment declares "shall be preserved." It does not prescribe at what stage of an action a trial by jury must, if demanded, be had; or what conditions may be imposed upon the demand of such a trial, consistently with preserving the right to it. In passing upon these questions, the judicial decisions and the settled practice in the several States are entitled to great weight, inasmuch as the constitutions of all of them had secured the right of trial by jury in civil actions, by the words "shall be preserved," or "shall be as heretofore," or "shall remain inviolate," or "shall be held sacred," or by some equivalent expression.

A long line of judicial decisions in the several States, beginning early in this century, maintains the position that the constitutional right of trial by jury in civil actions is not infringed by a statute which sets the pecuniary limit of the jurisdiction of justices of the peace in actions at law higher than it was when the particular constitution was adopted, allows a trial by jury for the first time upon appeal from the judgment of the justice of the peace, and requires of the appellant a bond with surety to prosecute the appeal and to pay the judgment of the appellate court. The full extent and weight of those precedents cannot be justly appreciated without referring to the texts of the statutes which they upheld, and which have not always been fully set forth in the reports.

The leading case is *Emerick* v. *Harris*, (1808) 1 Binney, 416, which arose under the statutes of Pennsylvania. The provisions of the constitution of the State are quoted above. The provincial statute of March 1, 1745, gave a justice of the peace jurisdiction of actions to recover the sum of forty shillings and upwards and not exceeding five pounds; and authorized any person aggrieved by his judgment to appeal to the court of common pleas, "first entering into recognizance, with at least one sufficient security, at least in double value of

the debt or damages sued for, and sufficient to answer all costs, to prosecute the said appeal with effect, and to abide the order of the said court, or in default thereof to be sent by *mittimus* to the sheriff of the county, by him to be kept until he shall give such security, or be otherwise legally discharged." 1 Dall. Laws Penn. 304, 307. The statute of April 5, 1785, enlarged the summary jurisdiction of a justice of the peace to sums not exceeding ten pounds; and, for the avowed purpose of conforming to the constitution of the State, gave an appeal to the court of common pleas, upon the like terms as by the statute of 1745. And the statute of March 11, 1789, conferred upon the aldermen of the city of Philadelphia the jurisdiction of justices of the peace. 2 Dall. Laws Penn. 304, 305, 660. The statute of April 19, 1794, extended the jurisdiction of justices of the peace, as well as of the aldermen of Philadelphia, to demands not exceeding twenty pounds, with a right of appeal, after judgment, if the amount exceeded five pounds, to the court of common pleas, "in the same manner, and subject to all other restrictions and provisions," as in the statute of 1745. 3 Dall. Laws Penn. 536–538. In support of a writ of certiorari to quash a judgment for eleven pounds and six shillings, rendered in the alderman's court of Philadelphia upon default of the defendant, it was argued "that the constitution, by directing that trial by jury should be as heretofore, and the right thereof remain inviolate, had interdicted the legislature from abolishing or abridging this right in any case in which it had existed before the constitution; that a prohibition to do this directly was a prohibition to do it indirectly, either by deferring the decision of a jury until one, two or more previous stages of the cause had been passed, or by clogging the resort to that tribunal by penalties of any kind, either forfeiture of costs, security upon appeal, or delay; that the power to obstruct at all implied the power to increase the obstructions until the object became unattainable; and that the instant the enjoyment of the right was to be purchased by sacrifices unknown before the constitution, the right was violated, and ceased to exist as before." But the Supreme Court of Pennsylvania held that the statute of 1794 was a constitu-

tional regulation of judicial proceedings by legislative authority. 1 Binney, 424, 428. See also *McDonald* v. *Schell*, (1820) 6 S. & R. 240; *Biddle* v. *Commonwealth*, (1825) 13 S. & R. 405, 410; *Haines* v. *Levin*, (1866) 51 Penn. St. 412.

Soon after the decision in *Emerick* v. *Harris*, a similar decision was made by the Supreme Court of North Carolina. In the constitution of that State of 1776, it was declared that "in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable." 2 Charters and Constitutions, 1410. When that constitution was formed, justices of the peace had jurisdiction over sums of twenty shillings and under. In 1803, the legislature extended their jurisdiction to thirty pounds, "subject nevertheless to the right of appeal, as in similar cases" — a statute of 1794 having provided that, in all cases of appeals from the judgment of a justice, the appellant's subscription and acknowledgment of the security, attested by the justice, "shall be sufficient to bind the security to abide by and perform the judgment of the court; and where judgment shall be against the appellant, the same shall be entered on motion against the security, and execution shall issue against the principal, or against both principal and security, at the option of the plaintiff." 2 Martin's Laws of North Carolina, pp. 60, 207. "The legislature has," said the court, "given to either party the right of appealing to a court, where he will have the benefit of a trial by jury. It cannot, therefore, be said that the right of such trial is taken away. So long as the trial by jury is preserved through an appeal, the preliminary mode of obtaining it may be varied at the will and pleasure of the legislature. The party wishing to appeal may be subjected to some inconvenience in getting security, but this inconvenience does not in this, nor in any other case where security is required, amount to a denial of right." *Keddie* v. *Moore*, (1811) 2 Murphy, 41, 45; followed in *Wilson* v. *Simonton*, (1821) 1 Hawks, 482.

The constitution of Tennessee of 1796 declared that "the right of trial by jury shall remain inviolate." 2 Charters and

Constitutions, 1674. At the time of the adoption of that constitution, as appears by the territorial statute of 1794, c. 1, §§ 52, 54, justices of the peace had jurisdiction only of actions for twenty dollars and under; and either party might appeal to the county court, "first giving security for prosecuting such appeal with effect, which said appeal shall be tried and determined at the first court, by a jury of good and lawful men, and determination thereon shall be final." The jurisdiction of a justice of the peace was extended by the statute of 1801, c. 7, to fifty dollars, "subject, nevertheless, to appeal by either party, to be tried in the county court by a jury, as in other cases." And the statute of 1809, c. 63, provided that an appeal from the judgment of a justice of the peace should not be granted, unless the appellant "enter into bond with good and sufficient security, with a condition to prosecute said appeal;" and that, if the papers should not be returned to the clerk of the county court at the return term, it should "be lawful for the appellee, on the production of the papers in the cause, to move for judgment against the appellant and his securities, for the amount of the debt and costs, if he should have been the original defendant; if not, for the amount of costs." 1 Scott's Laws of Tennessee, pp. 476, 695, 1166. The statute of 1831, c. 59, further extended the jurisdiction of a justice of the peace to one hundred dollars. Public Acts of Tennessee of 1831, p. 83. In a case arising under the last statute, the Supreme Court of Tennessee, while Chief Justice Catron (afterwards a justice of this court) was a member thereof, declared it to have been settled by a long series of its decisions, beginning under the statute of 1801, that such a statute was constitutional, upon the ground that "inasmuch as the party was in all cases allowed his appeal, when he could have a trial by jury, the right of trial by jury was not taken away; so that the terms of requiring bail or security for the money belonged to the legislature to provide, and though the security required in the cases of appeal differed from those cases where the party was brought into court by original writ, still, as it did not take away the right of trial by jury, the act was not unconstitutional." *Morford* v. *Barnes*, (1835)

8 Yerger, 444, 446; followed in *Pryor* v. *Hays*, (1836) 9 Yerger, 416.

The constitution of Connecticut of 1818, article 1, section 21, likewise declared that "the right of trial by jury shall remain inviolate." 1 Charters and Constitutions, 259. At the time of its adoption, the jurisdiction of justices of the peace, in actions of trespass, was limited to fifteen dollars. In the Revised Laws of 1821, tit. 2, § 23, their jurisdiction was extended to thirty-five dollars; but in demands for more than seven dollars an appeal was allowed to the county court, the appellant to "give sufficient bond, with surety, to the adverse party, to prosecute such appeal to effect, and to answer all damages in case he make not his plea good." The Supreme Court of Connecticut held the statute constitutional; and Chief Justice Hosmer, in delivering judgment, said: "I admit that the trial by jury must continue unimpaired; and shall not now dispute that there can be no enlargement of a justice's jurisdiction, which shall take from any one the legal power of having his cause heard by a jury, precisely as it might have been before the constitution was adopted. It is indisputable that a justice of the peace is empowered to hear all causes personally, and that he cannot try them by a jury. The question, then, is brought to this narrow point: whether the enlargement of a justice's jurisdiction, with the right of appeal, as it existed when the constitution was adopted, is a violation of the above privilege, secured by that instrument. I am clear that it is not; and that a construction of this nature is equally unwarranted by the words, and by the intention, of the constitution. An instrument remains inviolate if it is not infringed; and by a violation of the trial by jury, I understand taking it away, prohibiting it, or subjecting it to unreasonable and burdensome regulations, which, if they do not amount to a literal prohibition, are, at least, virtually of that character. It never could be the intention of the constitution to tie up the hands of the legislature, so that no change of jurisdiction could be made, and no regulation even of the right of trial by jury could be had. It is sufficient, and within the reason-

able intendment of that instrument, if the trial by jury be not impaired, although it may be subjected to new modes, and even rendered more expensive, if the public interest demand such alteration. A law containing arbitrary and unreasonable provisions, made with the intention of annihilating or impairing the trial by jury, would be subject to the same considerations, as if the object had been openly and directly pursued. But, on the other hand, every reasonable regulation, made by those who value this palladium of our rights, and directed to the attainment of the public good, must not be deemed inhibited because it increases the burden or expense of the litigating parties." "In conclusion, I am satisfied that the liberty of appeal preserves the right of trial by jury inviolate, within the words and fair intendment of the constitution; and that no such unreasonable hardship is put on the appellant, by the bond required for the prosecution of the appeal, as to justify the assertion that the right of trial by jury is in any manner impaired." *Beers* v. *Beers*, (1823) 4 Conn. 535, 538–540. See also *Colt* v. *Eves*, (1837) 12 Conn. 243, 253; *Curtis* v. *Gill*, (1867) 34 Conn. 49.

Before the adoption of the constitution of the State of Maryland, each of the statutes of the Province "for the speedy recovery of small debts out of court, before a single justice of the peace," would appear to have restricted his civil jurisdiction to claims for thirty-three shillings and four pence, as in the statute of 1715, c. 12, or for fifty shillings, as in the statute of 1763, c. 21. Bacon's Laws.

By the statute of the State of Maryland of 1791, c. 68, "for the speedy recovery of small debts out of court," § 1, any one justice of the peace, of the county wherein the debtor resided, was vested with jurisdiction to try, hear and determine "all cases where the real debt and damages doth not exceed ten pounds current money," (or twenty-six and two thirds dollars,) "and, upon full hearing of the allegations and evidences of both parties, to give judgment, according to the laws of the land, and the equity and right of the matter." By § 6, his jurisdiction was made exclusive to that extent. By § 4, "in all cases where the debt or demand doth exceed twenty

shillings common money," (or two and two thirds dollars,) "and either plaintiff or defendant shall think him or herself aggrieved by the judgment of any magistrate, he or she shall be at liberty to appeal to the next county court, before the justices thereof, who are hereby, upon the petition of the appellant, in a summary way, empowered and directed to hear the allegations and proofs of both parties, and determine upon the same according to the law of the land, and the equity and right of the matter;" and "either of the said parties may demand a trial by jury, or leave the cause to be determined by the court, at their election." And by § 5, the appellant was required to give bond with sufficient sureties, in double the sum to be recovered, to prosecute his appeal, and to pay the appellee, "in case the said judgment shall be affirmed, as well the debt, damage and cost adjudged by the justice from whose judgment such appeal shall be made, as also all cost and damage that shall be awarded by the court before whom such appeal shall be heard, tried and determined." Latrobe's Justices' Practice, (1st ed. 1826) pp. 56, 112, 360, 362; 2 Kilty's Laws.

By the statute of Maryland of 1809, c. 76, §§ 1, 6, (3 Kilty's Laws,) the exclusive original jurisdiction of justices of the peace was extended to all cases where the real debt or damages demanded did not exceed fifty dollars. And by the statute of Maryland of 1852, c. 239, their original jurisdiction was extended to all cases of contract, tort or replevin, where the sum or damage or thing demanded did not exceed one hundred dollars, with a right of appeal to the county court; and was made concurrent with that of the county court where it exceeded fifty dollars.

In *Steuart* v. *Baltimore*, (1855) 7 Maryland, 500, the Court of Appeals of Maryland, speaking by Judge Eccleston, said: "In the third section of the old bill of rights, it was declared 'that the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law.' Notwithstanding this, the legislature passed laws at different times, extending the jurisdiction of justices of the peace in matters of contract, and giving jurisdiction

in matters of tort where they had none previously. These laws, of course, made no provision for trials by jury except on appeal to the county courts, and yet they were constantly acquiesced in, and not considered as being repugnant to the bill of rights." The court then referred to *Morford* v. *Barnes*, *Beers* v. *Beers* and *McDonald* v. *Schell*, above cited, and added: "These cases fully establish the principle that where a law secures a trial by jury upon an appeal, it is no violation of a constitutional provision for guarding that right, although such law may provide for a primary trial without the intervention of a jury. This is upon the ground that the party, if he thinks proper, can have his case decided by a jury before it is finally settled." 7 Maryland, 511, 512.

To the like general effect are the following: Kentucky Stat. January 30, 1812, §§ 4–6, 2 Morehead & Brown's Digest, pp. 893, 894; *Pollard* v. *Holeman*, (1816) 4 Bibb, 416; *Head* v. *Hughes*, (1818) 1 A. K. Marshall, 372; *Feemster* v. *Anderson*, (1828) 6 T. B. Monroe, 537; *Flint River Co.* v. *Foster*, (1848) 5 Georgia, 194, 208; *Lincoln* v. *Smith*, (1855) 27 Vermont, 328, 361; *Lamb* v. *Lane*, (1854) 4 Ohio St. 167, 180; *Norton* v. *McLeary*, (1858) 8 Ohio St. 205, 209; *Reckner* v. *Warner*, (1872) 22 Ohio St. 275, 291, 292; Cooley Const. Lim. (6th ed.) 505; 1 Dillon Mun. Corp. (4th ed.) § 439.

VI. When the District of Columbia passed under the exclusive jurisdiction of the United States, the statute of Maryland of 1791, c. 68, above quoted, (having been continued in force by the statute of that State of 1798, c. 71, 2 Kilty,) was one of the laws in force in the District.

The act of Congress of February 27, 1801, c. 15, in § 1, enacted that the laws in force in the State of Maryland, as they then existed, should be and continue in force in that part of the District which had been ceded by that State to the United States — which, since the retrocession of the county of Alexandria to the State of Virginia by the act of Congress of July 9, 1846, c. 35, (9 Stat. 35,) is the whole of the District of Columbia — and, in § 11, provided for the appointment of "such number of discreet persons to be justices of the peace" in the District of Columbia as the President should think expedient,

who should continue in office five years, and who should "in all matters civil and criminal, and in whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws hereinbefore continued in force in those parts of said District for which they shall have been respectively appointed; and they shall have cognizance in personal demands of the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding." 2 Stat. 104, 107.

In quoting the provisions of subsequent acts of Congress, the reënactments of them in the corresponding sections of the Revised Statutes of the District of Columbia will be referred to in brackets.

On March 1, 1823, Congress took up the subject in the act of 1823, c. 24, entitled "An act to extend the jurisdiction of justices of the peace in the recovery of debts in the District of Columbia." 3 Stat. 743.

The first section of that act gave to any one justice of the peace, of the county wherein the defendant resided, jurisdiction to try, hear and determine "all cases where the real debt or damages do not exceed the sum of fifty dollars, exclusive of costs," "and, upon full hearing of the allegations and evidence of both parties, to give judgment, according to the laws existing in the said District of Columbia, and the equity and right of the matter, in the same manner and under the same rules and regulations, to all intents and purposes, as such justices of the peace are now authorized and empowered to do when the debt and damages do not exceed the sum of twenty dollars, exclusive of costs." [Rev. Stat. D. C. §§ 997, 1006.] And by section 6, the jurisdiction of justices of the peace up to fifty dollars was made exclusive. [Rev. Stat. D. C. § 769.] The reference in section 1 was evidently to the act of Congress of February 27, 1801, § 11, above quoted; and sections 1 and 6 of the act of 1823 followed, as to jurisdictional amount, the statute of Maryland of 1809, c. 76, §§ 1, 6.

Sections 3 and 4 of the act of Congress of 1823 made it the duty of every justice of the peace to keep a docket con-

taining a record of his proceedings, and subjected him to damages to any person injured by his neglect to keep one. [Rev. Stat. D. C. §§ 1000, 1001.] Those provisions were evidently taken from the statute of Maryland of 1809, c. 76, §§ 4, 5. But they never were considered, either in the State of Maryland or in the District of Columbia, as making a justice of the peace a court of record.

By section 7 of the act of Congress of 1823, "in all cases where the debt or demand doth exceed the sum of five dollars, and either plaintiff or defendant shall think him or herself aggrieved by the judgment of any justice of the peace, he or she shall be at liberty to appeal to the next Circuit Court in the county in which the said judgment shall have been rendered, before the judges thereof, who are hereby, upon the petition of the appellant, in a summary way, empowered and directed to hear the allegations and proofs of both parties, and determine upon the same according to law, and the equity and right of the matter;" "and either of the said parties may demand a trial by jury, or leave the cause to be determined by the court, at their election." [Rev. Stat. D. C. §§ 1027, 775, 776.] These provisions (increasing the requisite sum, however, from twenty shillings, or two and two thirds dollars, to five dollars) were evidently copied from the statute of Maryland of 1791, c. 68, § 4, above cited; and the provision of § 5 of that statute, which required the appellant to give bond with sureties to pay, if the judgment should be affirmed, as well the sum and costs adjudged by the justice of the peace, as also those awarded by the appellate court, was not repealed or modified by the act of Congress of 1823, and appears to have been considered as still in force in the District of Columbia. *Butt* v. *Stinger*, (1832) 4 Cranch C. C. 252.

The same act of 1823, for the first time in the legislation of Congress, provided that actions might be tried by a jury before a justice of the peace, as follows:

"Sec. 15. In every action to be brought by virtue of this act, where the sum demanded shall exceed twenty dollars, it shall be lawful for either of the parties to the suit, after issue joined, and before the justice shall proceed to inquire into the

merits of the cause, to demand of the said justice that such action be tried by a jury; and upon said demand the said justice is hereby required to issue a *venire* under his hand and seal, directed to any constable of the county where said cause is to be tried, commanding him to summon twelve jurors to be and appear before the justice issuing such *venire*, at such time and place as shall be therein expressed; and the jurors thus summoned shall possess the qualifications, and be subject to the exceptions, now existing by law in the District of Columbia.

"SEC. 16. If any of the persons so summoned and returned as jurors shall not appear, or be challenged and set aside, the justice before whom said cause is to be tried shall direct the constable to summon and return forthwith a *tales*, each of whom shall be subject to the same exceptions as the jurors aforesaid, so as to make up the number of twelve, after all causes of challenge are disposed of by the justice; and the said twelve persons shall be the jury who shall try the cause, each of whom shall be sworn by the justice well and truly to try the matter in difference between the parties, and a true verdict to give, according to evidence; and the said jury, being sworn, shall sit together, and hear the proofs and allegations of the parties, in public, and when the same is gone through with, the justice shall administer to the constable the following oath, viz.: 'You do swear, that you will keep this jury together in some private room, without meat or drink, except water; that you will not suffer any person to speak to them, nor will you speak to them yourself, unless by order of the justice, until they have agreed on their verdict.' And when the jurors have agreed on their verdict, they shall deliver the same publicly to the justice, who is hereby required to give judgment forthwith thereon; and the said justice is hereby authorized to issue execution on said judgment, in the manner, and under the limitations, hereinbefore directed." 3 Stat. 746. [Rev. Stat. D. C. §§ 1009–1017.]

These sections, providing for a trial by a jury before the justice of the peace, would appear, from their position in the act, to have been added, by an afterthought, to the scheme of the earlier sections, derived from the legislation of Maryland,

and providing for a trial without any jury before a justice of the peace, and for a trial by jury, if demanded by either party, in an appellate court; and were evidently taken, in great part *verbatim*, from the twelfth section of the statute of New York of 1801, c. 165, (which gave justices of the peace jurisdiction of actions in which the debt or damages did not exceed twenty-five dollars,) as modified by the twenty-second section of the statute of New York of 1818, c. 94, which extended their civil jurisdiction to fifty dollars. The material parts of both those statutes are copied, for convenience of comparison, in the margin.[1]

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[1] "In every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or the attorney of either of them, after issue joined, and before the court shall proceed to inquire into the merits of the cause, to demand of the said court that such action be tried by a jury; and upon such demand the said justice holding such court is hereby required to issue a *venire*, directed to any constable of the city or town where the said cause is to be tried, commanding him to summon twelve good and lawful men, being freeholders or freemen of such city, or being freeholders of such town, where said cause is to be tried, and who shall be in nowise of kin to the plaintiff or defendant, nor interested in such suit, to be and appear before such justice issuing such *venire*, at such time and place as shall be expressed in such *venire*, to make a jury for trial of the action between the parties mentioned in the said *venire*." [It is then provided that the names of the jurors so summoned shall be written on separate papers and put into a box.] "And on the trial of such cause such justice, or such indifferent person as he shall appoint for that purpose, shall draw out six of the said papers one after another; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number thereof shall be drawn as shall make up the number of six who do appear, after all legal causes of challenge allowed by the said justice, unless the said parties agree that the said constable shall summon six men at his discretion; and the said six persons so first drawn and appearing and approved by the court as indifferent, shall be the jury who shall try the cause, to each of whom the said justice shall administer the following oath: 'You do swear in the presence of Almighty God, that you will well and truly try the matter in difference between —— plaintiff and —— defendant, and a true verdict will give according to evidence.' And after the said jury have taken the oath aforesaid, they shall sit together, and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence." [Provision is then made for the form of oath to be administered to witnesses.] "And after hearing the proofs and allegations, the jury shall be kept together in some convenient place until they

The provisions of the New York statute of 1801, (copied in the margin,) were reënacted, almost word for word, in the statutes of that State of 1808, c. 204, § 9, and of 1813, c. 53, § 9.

The New York statutes of 1801, 1808 and 1813, indeed, differed from the act of Congress of 1823, in giving a justice of the peace civil jurisdiction up to twenty-five dollars only; in authorizing every action "brought by virtue of this act," without restriction of amount, to be tried by a jury before a justice of the peace; in providing for a jury of six, instead of a jury of twelve men; and in the mode of selecting the jury; but were construed to authorize the justice of the peace (as the act of Congress of 1823 afterwards did in terms) to award a *tales* in case of a default of the jurors summoned on the *venire*. *Zeely* v. *Yansen*, (1807) 2 Johns. 386.

The New York statute of 1818, however, like the act of Congress of 1823, extended the civil jurisdiction of a justice

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all agree upon a verdict, and for which purpose a constable shall be sworn, and to whom the said justice shall administer the following oath, viz.: 'You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn on this inquest together in some private and convenient place, without meat or drink, except water; you will not suffer any person to speak to them, nor speak to them yourself, unless by order of the justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict.' And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereafter directed." N. Y. Stat. 1801, c. 165, § 12.

"In every action to be brought by virtue of this act, wherein the sum or balance due, or thing demanded, shall exceed twenty-five dollars, if either of the parties, the agent or attorney of either of them, after issue joined, and before the court shall proceed to inquire into the merits of the cause, shall demand of the court that such action be tried by a jury, and that such jury shall consist of twelve men, the *venire* to be issued shall in every such case require twenty good and lawful men to be summoned as jurors, and the jury for the trial of every such issue shall in such cases consist of twelve men, instead of six, as in other cases of trial before a justice; and the provisions in the ninth and tenth sections of the act above mentioned [of 1813, c. 53, reënacting the statute of 1801, c. 165, §§ 12, 13,] shall be followed, and shall be deemed to apply in every other respect." N. Y. Stat. 1818, c. 94, § 22.

of the peace to fifty dollars, and (in the section copied in the margin) provided for a trial by a jury of twelve men before the justice of the peace, although it differed from the act of Congress in allowing such a trial to be had only when the sum demanded exceeded twenty-five dollars, whereas the act of Congress allowed it whenever the sum demanded exceeded twenty dollars.

The New York statute of 1801 also, in its first section, differed from the act of Congress, by expressly authorizing a justice of the peace to hold a court, and vesting him with all the powers of a court of record; and, in the twelfth section, by not requiring the justice of the peace to give judgment "forthwith" upon the verdict of the jury.

Yet under that statute it was held by the Supreme Court of the State of New York, in *per curiam* opinions, doubtless delivered by Chancellor (then Chief Justice) Kent, and, before the passage of the act of Congress of 1823, was understood to be settled law in that State, that upon a trial by a jury before a justice of the peace, (differing in these respects from a trial by jury in a superior court,) the jury were to decide both the law and the facts, and the justice was bound to render judgment, as a thing of course, upon the verdict of the jury, and had no authority to arrest the judgment or to order a new trial. *Felter* v. *Mulliner*, (1807) 2 Johns. 181; *M'Neil* v. *Scoffield*, (1808) 3 Johns. 436; *Hess* v. *Beekman*, (1814) 11 Johns. 457; Cowen's Justice of the Peace, (1st ed. 1821) 541, 544.

By a familiar canon of interpretation, heretofore applied by this court whenever Congress, in legislating for the District of Columbia, has borrowed from the statutes of a State provisions which had received in that State a known and settled construction before their enactment by Congress, that construction must be deemed to have been adopted by Congress together with the text which it expounded, and the provisions must be construed as they were understood at the time in the State. *Metropolitan Railroad* v. *Moore*, (1887) 121 U. S. 558, 572; *Willis* v. *Eastern Trust Co.*, (1898) 169 U. S. 295, 307, 308.

VII. The questions of the validity and the effect of the act of Congress of 1823 then present themselves in this aspect:

The Seventh Amendment to the Constitution of the United States secures to either party to every suit at law, in which the value in controversy exceeds twenty dollars, the right of trial by jury; and forbids any such suit, in which there has once been a trial by jury, within the sense of the common law and of the Constitution, to be tried anew upon the facts in any court of the United States.

Congress, when enlarging, by the act of 1823, the exclusive original jurisdiction of justices of the peace in the District of Columbia from twenty to fifty dollars, manifestly intended that the dictates of the Constitution should be fully carried out, in letter and spirit. With this object in view, Congress first enacted that "in all cases" before a justice of the peace, in which the demand exceeded five dollars, either the plaintiff or the defendant should have a right to appeal from the judgment of the justice of the peace to the Circuit Court of the United States, and either of the parties might elect to have "a trial by jury" in that court. Congress also, by way of additional precaution, further enacted that every case, in which the sum demanded exceeded twenty dollars, should, if either party so requested, "be tried by a jury" of twelve men before the justice of the peace.

In all acts of Congress regulating judicial proceedings, the very word "appeal," unless restricted by the context, indicates that the facts, as well as the law, involved in the judgment below, may be reviewed in the appellate court. *Wiscart* v. *Dauchy*, (1796) 3 Dall. 321, 327; *In re Neagle*, (1890) 135 U. S. 1, 42; *Dower* v. *Richards*, (1894) 151 U. S. 658, 663, 664.

By section 7 of the act of 1823, the right of appeal to a court of record was expressly given "in all cases where the debt or demand doth exceed the sum of five dollars, and either plaintiff or defendant shall think him or herself aggrieved by the judgment of any justice of the peace." The words "in all cases," in their natural meaning, include cases which have been tried by a jury before the justice of the

peace, as well as those tried by him without a jury; and we perceive no necessity and no reason for restricting their application to the latter class of cases, and thereby allowing the fact, that upon the demand of one party the case has been tried by a jury before the justice of the peace, to prevent the other party from appealing to a court of record and obtaining a trial by jury in that court.

Neither the direction of section 1, that the justice of the peace should give judgment "according to the laws existing in the District of Columbia, and the equity and right of the matter," nor the similar direction of section 7, that the case should be determined on appeal "according to law, and the equity and right of the matter," can reasonably be construed as conferring chancery jurisdiction, either upon the justice of the peace, or upon the appellate court, or as substituting the rules of technical equity for the rules of law.

The trial by jury, allowed by the seventh section of the act, in a court of record, in the presence of a judge having the usual powers of superintending the course of the trial, instructing the jury on the law and advising them on the facts, and setting aside their verdict if in his opinion against the law or the evidence, was undoubtedly a trial by jury, in the sense of the common law, and of the Seventh Amendment to the Constitution.

But a trial by a jury before a justice of the peace, pursuant to sections 15 and 16 of the act, was of quite a different character. Congress, in regulating this matter, might doubtless allow cases within the original jurisdiction of a justice of the peace to be tried and decided in the first instance by any specified number of persons in his presence. But such persons, even if required to be twelve in number, and called a jury, were rather in the nature of special commissioners or referees. A justice of the peace, having no other powers than those conferred by Congress on such an officer in the District of Columbia, was not, properly speaking, a judge, or his tribunal a court; least of all, a court of record. The proceedings before him were not according to the course of the common law; his authority was created and defined by, and

rested upon, the acts of Congress only. The act of 1823, in permitting cases before him to be tried by jury, did not require him to superintend the course of the trial or to instruct the jury in matter of law; nor did it authorize him, upon the return of their verdict, to arrest judgment upon it, or to set it aside, for any cause whatever; but made it his duty to enter judgment upon it forthwith, as a thing of course. A body of men, so free from judicial control, was not a common law jury; nor was a trial by them a trial by jury, within the meaning of the Seventh Amendment to the Constitution. It was no more a jury, in the constitutional sense, than it would have been, if it had consisted, as has been more usual in statutes authorizing trials by a jury before a justice of the peace, of less than twelve men.

There was nothing, therefore, either in the Constitution of the United States, or in the act of Congress, to prevent facts once tried by such a jury before the justice of the peace from being tried anew by a constitutional jury in the appellate court.

VIII. The majority of the Court of Appeals, in the case at bar, in holding that no appeal lay from a judgment entered by a justice of the peace on a verdict in the District of Columbia, appears to have been much influenced by the practice, which it declared to have prevailed in the District for seventy years, in accordance with decisions made by the Circuit Court of the United States of the District of Columbia soon after the passage of the act of Congress of 1823. But the reasons assigned for those decisions are unsatisfactory and inconclusive.

Such decisions, indeed, were made by the Circuit Court in several early cases. *Davidson* v. *Burr*, (1824) 2 Cranch C. C. 515; *Maddox* v. *Stewart*, (1824) 2 Cranch C. C. 523; *Denny* v. *Queen*, (1827) 3 Cranch C. C. 217; *Smith* v. *Chase*, (1828) 3 Cranch C. C. 348. Yet the appellant in one of those cases, whose appeal had been dismissed as unauthorized by law, was notwithstanding held liable on his bond to prosecute the appeal. *Chase* v. *Smith*, (1830) 4 Cranch C. C. 90.

The decisions in question would appear, by the brief notes

of them in the reports of Chief Justice Cranch, to have proceeded upon the assumption that the trial before a justice of the peace, by a jury empanelled pursuant to the act of 1823, was a trial by jury within the meaning of the Seventh Amendment to the Constitution, and therefore the facts could not be tried anew upon appeal. In *Smith* v. *Chase*, however, that learned judge (declaring that he spoke for himself only) delivered an elaborate opinion, in which he maintained the position that, upon the demand of a trial by a jury, the cause was taken entirely out of the hands of the justice of the peace; that he was obliged to summon and swear the jury, and to render judgment according to their verdict; that no authority was given to him to instruct the jury upon matter of law or of fact, or to set aside their verdict and grant a new trial; and that the jury were not bound by his opinion upon matter of law, but were to decide the law as well as the fact. 3 Cranch C. C. 351, 352. From these premises he inferred (by what train of reasoning does not clearly appear) that such a trial by a jury before the justice of the peace was a trial by jury within the meaning of the Seventh Amendment to the Constitution; that the facts so tried, therefore, could not be tried anew in an appellate court; and that no appeal lay in such a case. Curiously enough, that opinion, purporting to have been delivered at December term, 1828, refers to the opinion of this court in *Parsons* v. *Bedford*, 3 Pet. 446–448, which was not delivered until January term, 1830.

In 1863, all the powers and jurisdiction, previously possessed by the Circuit Court of the District, including the appellate jurisdiction from justices of the peace, were transferred by Congress to the Supreme Court of the District of Columbia. Act of March 3, 1863, c. 91, §§ 1, 3, 12; 12 Stat. 762–764. [Rev. Stat. D. C. §§ 760, 1027.]

The foregoing decisions of the Circuit Court were followed in the Supreme Court of the District at general term in 1873, without much discussion, in *Fitzgerald* v. *Leisman*, 3 McArthur, 6; and at special term in 1896, by Justice Bradley in *Brightwood Railway* v. *O'Neal*, 24 Wash. Law Rep. 406, and by Justice Cox in the present case. *Capital Traction*

Co. v. *Hof*, 24 Wash. Law Rep. 646. But each of these two judges, while holding himself bound by the previous decisions of the courts of the District, expressed a clear and positive opinion that they were erroneous.

Apart from the inconsistencies in the opinions delivered in the courts of the District of Columbia, it is quite clear that the decisions of those courts, especially when they involve questions of the interpretation of the Constitution of the United States, and of the constitutionality and effect of acts of Congress, cannot be considered as establishing the law, or as relieving this court from the responsibility of exercising its own judgment. *Ex parte Wilson*, (1885) 114 U. S. 417, 425; *Andrews* v. *Hovey*, (1888) 124 U. S. 694, 717; *The J. E. Rumbell*, (1893) 148 U. S. 1, 17.

IX. The legislation of Congress since the act of 1823 has not changed the character of the office, or the nature of the powers, of the justices of the peace in the District of Columbia, or of the juries summoned to try cases before those justices. The principal changes have been by enlarging the limits of the civil jurisdiction of the justices of the peace, and by expressly requiring security on appeals from their judgments.

By the act of February 22, 1867, c. 63, § 1, (14 Stat. 401,) Congress enlarged the jurisdiction of justices of the peace in the District of Columbia to "all cases where the amount claimed to be due for debt or damages arising out of contracts, express or implied, or damages for wrongs or injuries to persons or property, does not exceed one hundred dollars, except in cases involving the title to real estate, actions to recover damages for assault, or assault and battery, or for malicious prosecution, or actions against justices of the peace or other officers for misconduct in office, or in actions for slander, verbal or written." [Rev. Stat. D. C. § 997.] And on the same day, Congress, by the act of 1867, c. 64, (14 Stat. 403,) provided that "no appeal shall be allowed from a judgment of a justice of the peace, unless the appellant, with sufficient surety or sureties, approved by the justice, enter into an undertaking to satisfy and pay all intervening damages and costs arising on the appeal;" and that, "when such

undertaking has been entered into, the justice shall immediately file the original papers, including a copy of his docket entries, in the office of the clerk of the Supreme Court of the District of Columbia; and thereupon, as soon as the appellant shall have made the deposit for costs required by law, or obtained leave from one of the justices, or from the court, to prosecute his appeal without a deposit, the clerk shall docket the cause," and it should be proceeded with substantially in the manner prescribed by the act of Congress of 1823. [Rev. Stat. D. C. §§ 1027–1029, 774.]

In 1874, the provisions, above quoted, of the acts of 1823 and 1867, were reënacted (with hardly any change except by subdividing and transposing sections) in the Revised Statutes of the District of Columbia, at the places above referred to in brackets.

By the act of February 19, 1895, c. 100, §§ 1, 2, justices of the peace of the District of Columbia have been granted (with the same exceptions as in the act of February 22, 1867, c. 63, also excepting, however, actions for damages for breaches of promise to marry, and not excepting actions for assault or for assault and battery) exclusive original jurisdiction of "all civil pleas and actions, including attachment and replevin, where the amount claimed to be due or the value of the property sought to be recovered does not exceed" one hundred dollars, and concurrent original jurisdiction with the Supreme Court of the District of Columbia, where it is more than one hundred and not more than three hundred dollars; "and where the sum claimed exceeds twenty dollars, either party shall be entitled to a trial by jury." And by § 3, "no appeal shall be allowed from the judgment of a justice of the peace in any common law action, unless the matter in demand in such action, or pleaded in set-off thereto, shall exceed the sum of five dollars; nor unless the appellant, with sufficient surety approved by the justice, enters into an undertaking to pay and satisfy whatever final judgment may be recovered in the appellate court." 28 Stat. 668.

Under the act of 1895, as under the previous acts of Congress, where the matter in controversy exceeds five dollars in value, an appeal lies to a court of record from any judgment

of a justice of the peace, whether rendered upon a verdict or not, and either party may have a trial by a common law jury in the appellate court; and the trial by jury in that court is, and the trial before a justice of the peace is not, a trial by jury within the meaning of the Seventh Amendment to the Constitution.

The only question remaining to be considered is of the constitutionality of the provisions of the act of 1895, by which the civil jurisdiction of justices of the peace is extended to three hundred dollars, and either party, on appealing from the judgment of the justice of the peace to the Supreme Court of the District of Columbia, is required to enter into an undertaking to pay and satisfy whatever judgment may be rendered in that court.

For half a century and more, as has been seen, after the adoption of the earliest constitutions of the several States, their courts uniformly maintained the constitutionality of statutes more than doubling the pecuniary limit of the civil jurisdiction of justices of the peace as it stood before the adoption of constitutions declaring that trial by jury should be preserved inviolate, although those statutes made no provision for a trial by jury, except upon appeal from the judgment of the justice of the peace, and upon giving bond with surety to pay the judgment of the appellate court. And such appears to have been understood to be the law of Maryland and of the District of Columbia before and at the time of the passage of the act of Congress of 1823.

Legislation increasing the civil jurisdiction of justices of the peace to two or three hundred dollars, and requiring each appellant from the judgment of a justice of the peace to a court of record, in which a trial by jury may be had for the first time, to give security for the payment of the judgment of the court appealed to, has not generally been considered as unreasonably obstructing the right of trial by jury, as is shown by the numerous statutes cited in the margin,[1]

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[1] Arkansas. Digest 1894, §§ 4317, 4431, 4432.
California. Code of Civil Procedure 1872, §§ 114, 974, 978.

from which it appears that the civil jurisdiction of justices of the peace has been increased to three hundred dollars in Pennsylvania, Ohio, Michigan, Kansas, Arkansas, Colorado and California; to two hundred and fifty dollars in Missouri; and to two hundred dollars in New York, Indiana, Illinois, Wisconsin, Delaware, North Carolina, Mississippi and Texas; and that the appellant is required (at least when the appeal is to operate as a supersedeas) to enter into a bond or recognizance, not only to prosecute his appeal, but to pay the judgment of the appellate court, in all those States, except Pennsylvania; and in that State any corporation, except a municipal corporation, is required to give such a bond, but other appellants are required to give bond for the payment of costs only. And we have not been referred to a single decision in any of those States that holds such a statute to be unconstitutional in any respect.

The legislature, in distributing the judicial power between courts of record, on the one hand, and justices of the peace or other subordinate magistrates, on the other, with a view to prevent unnecessary delay and unreasonable expense, must have a considerable discretion, whenever in its opinion, be-

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COLORADO. Rev. Stat. 1867, c. 50, §§ 1, 38,39; Gen. Laws 1877, §§ 1482, 1519, 1520; Gen. Stat. 1883, §§ 1924, 1979, 1980.

DELAWARE. Rev. Stat. 1893, c. 99, §§ 1, 25.

ILLINOIS. Rev. Stat. 1874, c. 79, §§ 13, 62; Starr & Curtis's Stat. 1896, c. 79, §§ 16, 115.

INDIANA. Rev. Stat. 1881, §§ 1433, 1500.

KANSAS. Gen. Stat. 1868, c. 81, §§ 2, 121; Gen. Stat. 1897, c. 103, §§ 20, 188.

MICHIGAN. Rev. Stat. 1872, §§ 5249, 5433; Howell's Stat. 1882, §§ 6814, 7000.

MISSISSIPPI. Code 1892, §§ 2394, 82.

MISSOURI. Rev. Stat. 1889, §§ 6122, 6328.

NEW YORK. Stat. 1861, c. 158; Rev. Stat. 1875, (6th ed.) pt. 3, tit. 2, § 56; tit. 4, § 53.

NORTH CAROLINA. Code 1883, §§ 834, 884.

OHIO. Rev. Stat. 1880, §§ 585, 6584.

PENNSYLVANIA. Stat. July 7, 1879, c. 211; Purdon's Digest, 1885, (11th ed.) Justice of the Peace, §§ 35, 99, 100.

TEXAS. Rev. Stat. 1879, §§ 1539, 1639; Rev. Stat. 1895, §§ 1568, 1670.

WISCONSIN. Rev. Stat. 1878, §§ 3572, 3756; Stat. 1898, §§ 3572, 3760.

cause of general increase in litigation, or other change of circumstances, the interest and convenience of the public require it, to enlarge within reasonable bounds the pecuniary amounts of the classes of claims entrusted in the first instance to the decision of justices of the peace, provided always the right of trial by jury is not taken away in any case in which it is secured by the Constitution.

Having regard to the principles and to the precedents applicable to this subject, we should not be warranted in declaring that the act of Congress of 1895 so unreasonably obstructs the right of trial by jury, that it must for this reason be held to be unconstitutional and void.

X. Upon the whole matter, our conclusion is, that Congress, in the exercise of its general and exclusive power of legislation over the District of Columbia, may provide for the trial of civil causes of moderate amount by a justice of the peace, or, in his presence, by a jury of twelve, or of any less number, allowing to either party, where the value in controversy exceeds twenty dollars, the right to appeal from the judgment of the justice of the peace to a court of record, and to have a trial by jury in that court; that Congress, in every case where the value in controversy exceeds five dollars, has authorized either party to appeal from the judgment of the justice of the peace, although entered upon the verdict of a jury, to the Supreme Court of the District of Columbia, and to have a trial by jury in that court; that the trial by a jury of twelve, as permitted by Congress to be had before a justice of the peace, is not, and the trial by jury in the appellate court is, a trial by jury, within the meaning of the common law, and of the Seventh Amendment to the Constitution; that therefore the trial of facts by a jury before the justice of the peace does not prevent those facts from being reëxamined by a jury in the appellate court; that the right of trial by jury in the appellate court is not unduly obstructed by the provisions enlarging the civil jurisdiction of justices of the peace to three hundred dollars, and requiring every appellant to give security to pay and satisfy the judgment of the appellate court; that the legislation of Congress upon the subject is in all respects consistent

Counsel for Parties.

with the Constitution of the United States; and that upon these grounds (which are substantially those taken by Chief Justice Alvey below) the judgment of the Court of Appeals, quashing the writ of certiorari to the justice of the peace, must be affirmed.

The effect of so affirming that judgment will be to leave the claim of Hof against the Capital Traction Company open to be tried by a jury before the justice of the peace, and, after his judgment upon their verdict, to be taken by appeal to the Supreme Court of the District of Columbia, and to be there tried by jury on the demand of either party.

Judgment affirmed.

Mr. Justice Brewer concurred in the judgment of affirmance, but dissented from so much of the opinion as upheld the validity of the provision of the act of Congress requiring every appellant from the judgment of a justice of the peace to give bond with surety for the payment of the judgment of the appellate court.

Mr. Justice Brown did not sit in this case, or take any part in its decision.

In No. 114, Metropolitan Railway Company *v.* Church, and No. 195, Brightwood Railway Company *v.* O'Neal, argued at the same time, the judgments of the Court of Appeals of the District of Columbia, quashing writs of certiorari to set aside proceedings of a justice of the peace under similar circumstances, are likewise

Affirmed.

Mr. D. W. Baker for Metropolitan Railway Co. *Mr. Nathaniel Wilson* was on his brief.

Mr. Ernest L. Schmidt for Church.

Mr. Henry P. Blair and *Mr. Corcoran Thom*, for Brightwood Railway Co., submitted on their brief.

Mr. Raymond A. Heiskell and *Mr. M. J. Colbert* for O'Neal.